IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1720

WORLDWIDE CHURCH OF GOD, INC., *et al.*,
Petitioners,

vs.

THE STATE OF CALIFORNIA,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California.

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SUBJECT INDEX

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Cases — Page

Page

Statutes

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PETITIONERS, WORLDWIDE CHURCH OF GOD, INC., a California corporation; AMBASSADOR COLLEGE, INC., a California corporation; AMBASSADOR INTERNATIONAL CULTURAL FOUNDATION, a California corporation; WORLDWIDE ADVERTISING, INC., a California corporation; GATEWAY PUBLISHING, INC., a California corporation; HERBERT W. ARMSTRONG; STANLEY R. RADER; HENRY CORNWALL; RALPH HELGE; and the accounting firm of RADER, CORNWALL and KESSLER, respectfully pray that a Writ of Certiorari issue to review an order of the California Supreme Court filed March 22, 1979, which finally determined Petitioners' right to immediate review of a trial court order of March 12, 1979, imposing a receivership

on the Worldwide Church of God and its affiliated entities, Ambassador College and the Ambassador International Cultural Foundation.

OPINION BELOW.

On March 22, 1979, the California Supreme Court, by the vote of 4-3, denied without opinion an original Application for Writ of Mandate/Prohibition. (The denial of original writ appears as Appendix A.)

JURISDICTION.

The Court's jurisdiction rests on 28 U.S.C. section 1257(3). The judgment of the California Supreme Court is final (see, *e.g., Madruga v. Superior Court,* 346 U.S. 556, 557, n. 1 (1954); *Rescue Army v. Municipal Court,* 331 U.S. 549, 565-568 (1947); *Michigan Central R. Co. v. Mix,* 278 U.S. 492, 494 (1929)).[1]

QUESTIONS PRESENTED FOR REVIEW.

Can the State of California, consistent with the Religion Clauses of the First Amendment, disregard the religious character of an established church, and because it is incorporated as a nonprofit corporation under state law, treat it as a charitable or public trust and establish the following relationship with and involvement in church affairs:

1. All church property is deemed owned by the People of the State not the church or its members and is subject to supervision, regulation and control by the State;

2. All church records are public records and are subject to audit and review by the State;

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[1]See further discussion, infra, pp. 12-16.

3. The State may compel the church at any time to account for all of its income and expenditures so the State may determine if church funds are being used for proper religious purposes;

4. Church officials are public trustees who serve and may be removed and replaced by the State;

5. The State may reorganize church structure from hierarchical to congregational form; and

6. The State may appoint a receiver to take possession of all church property and records and to operate and investigate the church as a means of accomplishing all or any of the foregoing objectives?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

The rights asserted by Petitioners arise under the Religion Clauses of the First Amendment of the United States Constitution as applied to the states by virtue of the Fourteenth Amendment. Respondent purports to ground its authority in part on California Corporations Code section 9505 which appears as Appendix B hereto.

STATEMENT OF THE CASE.

A. The Parties.

The Worldwide Church of God was founded approximately 46 years ago. It is a Christian church based upon fundamental teachings revealed in both the New and Old Testaments of the Bible. It is an hierarchical evangelical religious organization of fundamentalist orientation and is incorporated under the California General Nonprofit Corporation Law.

Herbert W. Armstrong is the founder of the Church, its Pastor General and in Church doctrine is Christ's

Apostle and Ambassador, the spiritual and temporal leader of the Church. Stanley R. Rader is Mr. Armstrong's chosen personal advisor.

Church membership numbers approximately 100,000 persons, about 90% of whom reside outside of California. The Church does not solicit funds from the public. Its members tithe and make other voluntary contributions. Significant support is also received from non-member contributors.

Church funds (last year's budget was approximately $57,000,000) are spent in furtherance of the Church's work, which includes the following:

1. A full range of Church programs and activities for Church members and families, including regularly scheduled religious programs and convocations, an international program of youth activities, and welfare and support programs for indigent members and families.

2. Spreading the gospel to all nations by (a) publication and distribution of periodicals such as "Quest" magazine, "The Plain Truth," "The Worldwide News," and "The Good News," plus with numerous booklets; (b) extensive television and radio broadcasting; (c) worldwide travels by Mr. Armstrong and his staff to meet with world leaders and speak to millions of people through media broadcasts (Mr. Armstrong has averaged more than 200 travel days per year over the last ten years).

3. Operation of Petitioner Ambassador College, located in Pasadena, California, where approximately 350 students are trained for work in the ministry of the Church.

4. Funding Petitioner Ambassador International Cultural Foundation (which presents concerts, opera,

theater and other cultural activities featuring world renowned artists)[2] and numerous other religious, charitable, educational and scientific projects including (a) archeological excavations and exhibits in Israel; (b) benefit funds for handicapped children in England and Monaco; (c) clinic for the underprivileged in Cairo; (d) Institute for Political Research and Society for Near Eastern Studies in Tokyo; and many more. The Church's activities have received commendations and awards from more than twenty nations. (See Declaration of Willis J. Bicket, a copy of which appears as Appendix C hereto, filed in support of Application for Immediate Stay, California Supreme Court.)[3] Respondent is the State of California.[4]

B. Procedural Summary—Trial Court.

1. *On January 2, 1979,* the California Attorney General commenced the present action contending that the Church is a charitable trust and, therefore, all Church property is beneficially owned not by the Church or its members but by the People of California, all Church property ultimately rests in the court's cus-

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[2]In recent years performing artists have included Artur Rubinstein, Vladimir Horowitz, Luciano Pavarotti, Beverly Sills, Mstislas Rostropovich, the Philadelphia Orchestra and many other first rank artists.

[3]The Declaration of Willis J. Bicket substantially summarizes the contents of previous declarations and testimony at trial court hearings by officers and members of the Church, such as: Declarations of Ellis LaRavia and Willis J. Bicket, filed in support of February 21, 1979 Motion to Vacate Receivership; Declarations of Stanley R. Rader and Joseph Kotora filed in support of Application to Dissolve *Ex Parte* Receivership on or about January 10, 1979; R.T. Jan. 10-12, pp. 273-291.

[4]The action was originally commenced by the State on relation of six individuals who have no continuing participation in the proceedings.

tody and is subject to the supervision of the court, all Church records are public records, Church officials are trustees who serve and may be removed at the Court's pleasure, and at "the slightest hint or suspicion of wrongdoing, let alone proof positive or proof by a preponderance, it is the court's duty . . . to see to it there is a worthy trustee installed, that an investigation is made, that the facts are exposed." The Attorney General contends and the Superior Court of the County of Los Angeles (the "trial court") has agreed that the court is "the guardian and this Church is [its] ward." (R.T. Jan. 10-12, pp. 9-12.)[5]

a. Pursuant to this charitable trust theory, the Attorney General alleges misuse of Church funds and seeks *inter alia,* (a) to compel the Church to make a full accounting to the court of all funds received, expended or held by the Church;[6] (b) to remove most of the present Church leadership and effectively to restructure the Church from an hierarchical to a congregational institution; (c) for appointment of a receiver to take possession of all Church assets, books and records; (d) to enjoin the Church and its leadership from interfering with the actions of the receiver.

b. On the same date, in accordance with the Attorney General's charitable trust theory, the trial court appointed a temporary receiver *ex parte* to take possession of all Church assets, books and records and to

[5]These statements and quotations of the Attorney General's position are from trial court transcripts, pertinent portions of which are quoted in Appendix D hereto.

[6]At a hearing on January 10, the Attorney General claimed the State may determine if Church funds are being used for proper Church purposes and undertook to demonstrate to the court that ". . . the money is not being used for God's work." (R.T. Jan. 10-12, p. 13.)

take legal action to "protect" and recover Church assets.[7]

2. *On January 3, 1979,* the receiver, the Attorney General and armed deputies appeared unannounced at Church headquarters and (a) proceeded to take control of Church assets, operations and many records which pertained to ecclesiastical matters, (b) commenced removing cartons of Church records without receipting or inventorying them, (c) and took over exclusive control (for several days) of the Church's computer data center. Church employees were threatened with contempt (and physical force); some were peremptorily dismissed. (See R.T. Jan. 5, pp. 20-31; R.T. Jan. 10-12, pp. 217-228.)

3. *On January 4, 1979,* Petitioners moved to dissolve the temporary receivership raising, *inter alia,* the unconstitutionality of the State's actions under the Religion Clauses of the First Amendment. The motion was denied on January 5.

4. *On January 12, 1979,* after hearing, the trial court found no evidence of liquidation of Church properties below value or destruction of Church documents (R.T. Jan. 12, pp. 385-386; R.T. Feb. 21, pp. 135-136) but nevertheless continued the receivership, explaining that "perhaps a trier of fact in the future in this,

[7]The receiver was appointed on the representation to the trial court that the Church leadership was conducting a massive liquidation of Church real property below value and that vital Church records and documents were being shredded. (R.T. Jan. 2, pp. 4, 6-8.) At a subsequent hearing on January 10-12, 1979, the trial court found these allegations were untrue or lacking in evidentiary support. (R.T. Jan. 10-12, pp. 385-386; see R.T. Feb. 21, pp. 135-136.)

The Attorney General relied, in part, on the case of *People v. Christ's Church,* 79 Cal.App.2d 858, 181 P.2d 49 (1947), in which no First Amendment contentions were raised.

when this action is heard, will determine that there is some possibility of truth in these charges, probability of truth." (R.T. Jan. 10-12, p. 385.)[8]

The trial court then entered an oral order, which was reduced to writing by order dated *January 19, 1979*, appointing a receiver *pendente lite* and empowering the receiver to take over all operations and functions of the Church except those deemed by the court to be ecclesiastical in nature.[9] Among other things, the receiver was authorized (a) to take immediate possession of all Church records, including membership lists, and to make all of these records immediately available to the Attorney General for use in the pending action; (b) to conduct a thorough audit of the business and financial dealings of the Church; (c) to supervise the day-to-day operations of the Church and, if he saw fit, to assume complete control of operations; (d) to suspend or terminate any employees of the Church except Herbert W. Armstrong or Stanley Rader; and (e) the court reserved to itself authority to remove Mr. Armstrong and Mr. Rader from office and to determine which Church affairs were ecclesiastical in nature and which were not.[10]

5. *On January 15, 1979*, the receiver intercepted, and stopped a communication from Mr. Armstrong

[8]The Attorney General argued and the trial court apparently accepted the position that the burden of proof lay with the Church leadership to prove there was no misuse of Church funds. (R.T. Jan. 10-12, pp. 361-362.)

[9]The receiver acknowledged the difficulty if not the impossibility of separating financial matters controlled by the receiver from ecclesiastical matters supposedly left to Mr. Armstrong. (R.T. Jan. 10-12, pp. 95-98.)

[10]A copy of the court's written order dated January 19, 1979 is filed herewith as Appendix E.

to the Church membership worldwide, in which Mr. Armstrong criticized the actions of the California Attorney General and courts and urged that contributions be sent to him at his residence in Tucson, Arizona to defend the lawsuit and continue the Church's work. Over the Church's First Amendment objections, the trial court affirmed the receiver's action, and enjoined Petitioners or anyone acting for them from attempting to divert voluntary contributions from being sent to Pasadena, California, where the receiver could take possession of them.[11]

6. *On February 21, 1979*, after seven weeks of sustained confrontation and forced cooperation between the Church and the receiver, the trial court, on the Church's motion, agreed to dissolve the receivership. Accordingly, by order of *March 2, 1979*, the trial court dissolved the first receivership and substituted in its stead an injunction which, *inter alia*, authorized the Attorney General "to conduct a thorough audit or other review as may be appropriate" of the financial affairs of the Church and to receive the "full and unqualified cooperation of the Defendants in the conduct of this financial review." Petitioners were required to furnish the Attorney General (a) physical facilities at Petitioners' data center; (b) a computer terminal with direct "on-line access to all portions of their [the Church's] computerized data-base and information retrieval system . . . so that the Attorney General will be in a position to retrieve from the computer quickly any accounting information regarding their affairs that he wishes;" (c) "full access to all computer

[11]A copy of the trial court's order approving actions of receiver filed January 17, 1979, is filed herewith as Appendix F.

programs, source program listings, operating procedures, record layouts, data-element descriptions, and documentation of the systems in use at their data center, immediately upon the auditor's request;" (d) "any financial records or documents requested by the Attorney General within five working hours or a written explanation for failure to do so;" and (e) "a complete magnetic tape copy of the financial data-base of the defendant nonprofit corporation [the Church] as it was in existence on their computers as of midnight December 31, 1978 . . . in a form convenient for processing on the Attorney General's own computers." The court reserved to itself the decision whether to compel the Church to disclose membership lists.[12]

7. *On March 12, 1979,* the trial court, at the conclusion of other matters in the case *sua sponte,* without giving notice or hearing evidence, ordered reinstatement of the receivership, appointed a new receiver, and conferred upon him substantially identical powers to those set forth in his order of January 19, 1979. The court set stay bond at $1,000,000.[13]

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[12]By March 2, 1979, attention focused on the Church's computer data center, described by the receiver's chief operating officer as one of the most advanced installations on the West Coast. (R.T. Feb. 21, p. 58). The data-base of this system includes current information in the computer and older information stored on magnetic tapes. The system is used primarily to store information of an ecclesiastical nature, including all mailing lists, such as membership lists, ministry lists, mailing lists for Church publications and communications, donor lists, welfare lists and the like. It also stores records of all income and expenditures for the Church, the College and the Foundation. (See R.T. Jan. 10-12, pp. 291-300.)

[13]Copies of the trial court's minute order of March 12 and formal order of March 16, 1979, are filed herewith as Appendix G.

The only "event" which occurred between March 2 when the trial court dissolved the first receivership and March 12 when he reinstated the receivership was Petitioners' filing of a notice of appeal from the injunction. Petitioners have also filed notices of appeal from each order appointing receiver. In normal course, it will take two years or more for these appeals to be resolved in the California appellate courts.

8. Within several days of the March 12 order reinstating the receivership, 899 Church members residing in California posted individual undertakings totalling in excess of $3,400,000, thereby staying reimposition of the receivership. The Attorney General has challenged all of these undertakings.

C. Procedural Summary — Appellate Court Proceedings.

1. *On January 16, 1979,* Petitioners filed a Petition for Writ of Prohibition/Mandate in the Court of Appeal seeking review of the trial court's oral order of January 12, appointing receiver *pendente lite.* On January 25, 1979, the Court of Appeal denied the Petition. On January 29, 1979, Petitioners petitioned the California Supreme Court for a hearing.

2. *On March 19, 1979,* Petitioners filed an original Petition for Mandate/Prohibition in the California Supreme Court seeking review of the trial court's order of March 12, 1979, reinstating the receivership.

3. *On March 22, 1979,* the California Supreme Court, by a 4-3 vote, denied the Petition for Hearing and the Petition for Mandate/Prohibition.

WHY THE FEDERAL CONSTITUTIONAL QUESTIONS ARE PROPERLY BEFORE THIS COURT.

A. The Injury to Petitioners' First Amendment Rights Has Been Massive, Immediate and Irreparable and Is Continuing.

The device of the receivership *pendente lite* was specifically designed to give and in fact gave the State immediate and total control over the property, records and affairs of the Church. Accordingly, the State has obtained most of the relief it sought in the complaint.[14] but without a trial on the merits or any proof of wrongdoing to justify such drastic relief. As a necessary corollary to the receiver's power, the Church (as well as its leaders and members) have suffered impairment and destruction of First Amendment rights just as extensive and final as if a judgment had been entered after trial. The Church has been delivered into bondage before it could establish its rights as a free institution.[15] Further litigation of course will continue the destruction of Petitioners' First Amendment rights so vigorously begun by the first receiver, but it will not raise any new issues under the Religion Clauses of the First Amendment or more clearly delineate existing

[14]The State sought an accounting—the first receiver initiated the accounting and the second receiver is directed to complete it; the State wanted Church officials removed—the receiver usurped their functions; the State wanted to determine what are proper religious expenditures—the receiver is empowered to control all expenditures and he or the court will determine whether any expenditure is for a proper purpose.

[15]Similarly, Church members were denied the right to intervene on behalf of the Church on the ground that the Church as a nonprofit corporation is a charitable trust subject to the jurisdiction of the State and that members, as mere donors, lack standing to intervene (Ruling of February 20, 1979 on Application for Leave to Intervene).

issues. The impact of the present proceeding on the First Amendment rights of the Church and its members has been devastating. We note the following for the Court's consideration:

a. The receiver carried off, examined and copied a huge number of Church documents, many of which the Church believes were ecclesiastical and privileged against disclosure. Similarly, the receiver took exclusive possession of the Church's computer system for several days and presumably had free access to lists of Church members, ministers and the like. Rights of privacy once invaded cannot be restored, but new invasions can be prevented.

b. The receivership instantly destroyed the Church's previously outstanding financial reputation, caused immediate cancellation of a four-million-dollar line of credit with various institutions, and reduced the Church to a cash-in-advance purchaser in a manner appropriate to a bankrupt. The receiver also caused a sharp drop in contributions when he telegraphed the Church ministry worldwide forbidding members from making contributions to Mr. Armstrong.[16] The Church's losses since January 3rd are estimated at more than $5,000,000 and they continue to mount. (See Appendix C.)

These enormous financial losses to the Church have translated into the following human and ecclesiastical losses: Elimination of the Church's national youth program for this year and curtailment of regional youth

[16]Considering that 90% of the Church membership reside outside of California, this was an extraordinary exercise of jurisdiction by the receiver and the California court.

programs;[17] elimination of subsidies to approximately 300-500 indigent families and widows to permit them to attend the Church's seven-day Feast of Tabernacles convocation, the high point of the Church's religious calendar; termination of 90 employees including ministers; 40% reduction of newsstand distribution of "Plain Truth"; drastic reduction of the Church's educational programs for the handicapped and alcoholism; drastic reduction of international programs; elimination of new construction and physical improvements at the facilities in Pasadena; and reduction or elimination of employee educational and training programs. (See Appendix C.)

These injuries are real, immediate and irreparable. They directly impair religious activities which are an integral part of the Church's program. They are the inevitable result of the State of California's massive intrusion into Church affairs and infringement of the Church's First Amendment rights.

B. Petitioners Asserted Their First Amendment Rights Immediately, Continually and at Every Level in the State Courts, to No Avail.

From their first opportunity on January 4, 1979, one day after the receiver's strike force descended on the Church headquarters in Pasadena, Petitioners have asserted their constitutional rights under the Religion Clauses of the First Amendment at every opportunity and at every level of the California court system through

[17]Mr. Bicket states in his Declaration (Appendix C): "Because the youth of the Church represents the future growth and leadership of the Worldwide Church of God, this reduction and potential loss of young people has caused great concern for the future of the Church."

and including the California Supreme Court.[18] First Amendment issues were squarely raised in the California Supreme Court both (a) on Petition for Hearing following denial of Petition for Writ of Prohibition/Mandate to Court of Appeal to review the order of January 12th imposing receivership and (b) on Petition for Writ of Mandate/Prohibition to the California Supreme Court to review order of March 12th reinstating receivership. The Attorney General responded that there is no First Amendment issue raised. Alternatively, the Attorney General has argued there is as yet no First Amendment issue, which, in light of the pervasive infringement of First Amendment rights which have already occurred, is the same as saying there never will be a First Amendment issue.

Squarely confronted with the constitutionality of a series of trial court orders which placed the Church completely under the control of the court and its receiver and opened Church files for indiscriminate review, the California Supreme Court, by a 4-3 vote, denied relief.

C. The Federal Issue, Impairment of Petitioners' First Amendment Rights, Is Ripe for Review by This Court.

Petitioners are concerned for the vitality and survival of the Church as a viable religious institution. The Church has already suffered great and irreparable injury at the hands of the State; it will continue to suffer

[18]These include Motion to Vacate filed on January 4th, the hearing on January 5th, the hearing of January 10-12, the hearing of February 21st, the hearing of March 1st, the hearing of March 12th, Petition for Writ to Court of Appeal on January 16th, Petition for Hearing in the California Supreme Court on January 29th, Petition for Original Writ in the California Supreme Court on March 19th, among others.

incalculable harm so long as this proceeding continues. If the Church is ever to obtain meaningful protection under the First Amendment, it must be now. Resolution of the constitutional questions presented herein will, we believe, result in the termination of the receivership and prompt and final disposition of this action. The federal issues will never be more ripe for review. Accordingly, the federal question is in appropriate posture for consideration by this Court. (*Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 483 (1975) ["[I]f a refusal immediately to review the state-court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation."]; *Construction Laborers v. Curry*, 371 U.S. 542, 548 (1963) ["What we do have here is a judgment of the [state] court finally and erroneously asserting its jurisdiction to deal with a controversy which is beyond its power. . . ."]; *Republic Gas Co. v. Oklahoma*, 334 U.S. 62, 68 (1948) [the Court has entertained appeals "because the controversy had proceeded to a point where a losing party would be irreparably injured if review were unavailing."]; *Nebraska Press Assn. v. Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, J. in chambers) ["each passing day may constitute a separate and cognizable infringement of the First Amendment"]; and cf. *National Socialist Party v. Skokie*, 432 U.S. 43 (1977); *Abney v. United States*, 431 U.S. 651, 657-660 (1977).)

REASONS FOR GRANTING THE WRIT.

A. The State of California Has Assumed Dominion and Control Over the Worldwide Church of God Under a Theory of Church-State Relationship Which, Unchecked, Will Extinguish All Guarantees of Religious Freedom Under the Free Exercise and Establishment Clauses of the First Amendment.

The State of California expressly and unequivocally asserts that religious organizations incorporated as nonprofit corporations are charitable trusts and, therefore, all Church property is subject to supervision by the State, all Church records are subject to review by the State; in sum, churches are wards of the State. Proceeding from these premises, the State claims it may determine if Church resources have been expended for a proper religious purpose within the body of Church doctrine, the State may force Church polity to conform to the State's notion of adequate governance, and the State may assume operation and control of the Church to achieve these ends.

This assertion of total dominion and control by the State of California over the property and affairs of the Worldwide Church of God is not unique. We are aware of at least one other case in which the State has asserted similar broad authority to investigate and control the affairs of a religious organization (*In the Matter of the Investigation of Faith Center, Inc., et al.*, Los Angeles Superior Court No. C254329). We do not know how many other churches have been or are presently being subjected to this massive infringement of their First Amendment rights. We do know that many and perhaps most churches in this state

are small, possessed of limited financial resources, and would have no choice but to succumb to the State's intrusion and claimed right to investigate and control their affairs.

Accordingly, the matter now before the Court is of far wider significance than just the rights of the Worldwide Church of God and its members. Unchecked here, the State of California will be free to proceed (and may be proceeding) against other religious institutions.

What California can do, other states can do, too. If the states may intrude into church affairs in the manner pursued here, the guarantees of the Religion Clauses of the First Amendment are a dead letter.

B. This Court Has Repeatedly Invoked the Religion Clauses of the First Amendment to Strike Down State Interference in Ecclesiastical Affairs Far Less Onerous and Pervasive Than That Involved in the Present Case.

The actions by the State of California in the present case contravene established constitutional principles enunciated by this Court in the following respects:

1. Contrary to the position of the State, a church does not become less than or other than a church simply because it incorporates. A state cannot strip a church of its religious character by calling it a charitable trust. This Court has rejected state or federal action which would subject religious institutions to state control applicable only outside the protective sphere of religion. Most recently, in *N.L.R.B. v. Catholic Bishop of Chicago*, ... U.S. ...., 59 L.Ed.2d 533 (1979), this Court rejected the National Labor Relations

Board's claim of jurisdiction over "religiously associated" private institutions which otherwise met the Board's jurisdictional requirements. To the Board a school was a school and teachers merely employees regardless of who employed them. This Court refused to let the Religion Clauses of the First Amendment be swept aside by this simplistic characterization, stressing that religious schools involve religious teaching and teachers at such schools fulfill a religious function:

> "In recent decisions involving aid to parochial schools we have recognized the critical and unique role of the teacher in fulfilling the mission of a church operated school." (59 L.Ed.2d at 541.)
>
> "The church-teacher relationship in a church-operated school differs from the employment relationship in a public or other non-religious school. We see no escape from conflicts flowing from the Board's exercise of jurisdiction over teachers in church-operated schools and the consequent serious First Amendment questions that would follow." (59 L.Ed.2d at 543.)

2. The State of California cannot constitutionally operate a church. (*Everson v. Board of Education*, 330 U.S. 1, 15 (1947) ["Neither a state nor the Federal Government can set up a church. . . . Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa."].

3. State supervision of church affairs necessitates unconstitutional entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971) ["A comprehensive, discriminating, and continuing surveillance . . . will involve excessive and enduring entanglement between state and church."].

4. More specifically, the accounting of church finances results in unconstitutional entanglement even where the church is willing to accept an audit. (*Lemon v. Kurtzman, supra,* 403 U.S. at 621-622 ["In particular the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and which are secular creates an intimate and continuing relationship between church and state."].)

5. The state cannot constitutionally determine whether church funds are properly spent for religious purposes. (*New York v. Cathedral Academy,* 434 U.S. 125, 133 (1977) ["The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment. . . ."]; Cf. *Presbyterian Church v. Blue Hull Mem. Presb. Church,* 393 U.S. 440, 449-450 (1969) [". . . First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. . . . [T]he departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role."].

6. The state cannot constitutionally dictate the manner of church governance or decide who shall and shall not be a church leader. (*Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952) [Freedom of religion encompasses the power of religious bodies "to decide for themselves, free from state interference,

matters of church government as well as those of faith and doctrine"]; *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 724 (1976) ["[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government. . . ."]; *Lemon v. Kurtzman, supra,* 403 U.S. at 625 ["The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice. . . ."]; Cf., *Md. & Va. Churches v. Sharpsburg Church,* 396 U.S. 367, 369 (1970) (Brennan, J. concurring) ["To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine." (fn. omitted)].

In short, the actions of the State of California are so far beyond the pale of permissible state involvement/interference with religion that, were it not for the necessity to reinstill meaning to the First Amendment, the case would warrant summary disposition.[19]

C. The State of California's Assertion of Control Over the Affairs of the Church Violates the Rights to Privacy and Freedom of Association of Church Members and Contributors.

The First Amendment comprehends the rights to privacy (*Griswold v. Connecticut,* 381 U.S. 479

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[19]The dangers to which the State's conceptualization of the Church as a charitable trust leads are also illustrated in *Late Corporation of Latter-Day Saints v. United States,* 136 U.S. 1 (1890) which antedates modern development of constitutional safeguards for freedom of religion. (See *Kedroff v. St. Nicholas Cathedral,* supra, 344 U.S. at 119-120 which rejects a New York legislative assertion of the charitable trust theory and distinguishes the 19th century Mormon Church case.)

(1965)), and freedom of association (*N.A.A.C.P. v. Alabama,* 357 U.S. 449 (1958)). Only a compelling state interest may force these rights to yield, and then only to the extent strictly necessary.

In the present case, the State's governing theory is that church records are public records and are always available for inspection by the State without reasons given. The various orders imposing a receivership on the Church endorse this theory. The January 19th order (Appendix E) directing the receiver to take possession of all Church documents and make them available for inspection to the Attorney General, specifically included membership lists. The March 12th order required Court approval before the receiver could disclose membership lists, but even this minimal safeguard was cosmetic in view of the fact that the receiver was given direct access to the Church's computer on which the membership lists were recorded. (See *Stanford v. Texas,* 379 U.S. 476, 485 (1965), where this Court noted the "constitutional impossibility of leaving the protection of [First Amendment] freedoms to the whims" of state officers.)

Even under the State's illegitimate goal—seeking to determine whether church funds have been expended for proper religious purposes—there would be no need for names of church members or contributors. However, because it has not had to do so, the State has offered no compelling (or any) justification for discovery of this information. Any and all First Amendment rights to privacy and freedom of association have been swept aside.

CONCLUSION.

The State of California has caused massive, immediate and irreparable destruction of Petitioners' rights under the Religion Clauses of the First Amendment. Through the device of a receivership *pendente lite,* the State has asserted dominion and control over the affairs of the Church and has thereby directly involved itself in ecclesiastical affairs.

If the State is permitted to proceed with this unprecedented action, we do not know how it will define church doctrine and restructive church polity. It will hardly matter, though, because by then the Church will have ceased to exist as a free institution in California.

Petitioners respectfully pray that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

ALLAN BROWNE
of
ERVIN, COHEN & JESSUP
WM. MARSHALL MORGAN
of
MORGAN, WENZEL & MCNICHOLAS
DAVID M. HARNEY
of
HARNEY & MOORE
ELLIS J. HORVITZ
MARC J. POSTER and
ALAN G. MARTIN
of
HORVITZ, GREINES & POSTER
A Law Corporation
Counsel for Petitioners

APPENDIX A.

ORDER DENYING ALTERNATIVE WRIT
L.A. NO. 31091

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK.

Worldwide Church of God Incorporated, etc., et al., Petitioners, v. The Superior Court of Los Angeles County, Respondent; People ex rel., Timmons, et al., Real Parties in Interest.

Petition for writ of mandamus and/or other relief DENIED. Bird, C.J., Mosk, J., and Richardson, J., are of the opinion that the petition should be granted.

Filed: March 22, 1979.

/s/ Bird
Chief Justice

APPENDIX B.

California Corporations Code Section 9505:

"A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure."

APPENDIX C.

DECLARATION OF WILLIS J. BICKET

I, WILLIS J. BICKET, hereby declare and state as follows:

I am the Assistant Treasurer of the Worldwide Church of God and Ambassador College (hereinafter collectively referred to as "Church"). The facts stated herein are known by me to be true. If called upon to do so, I could and would testify competently hereto under oath.

I

THE CHURCH

A. *History and Structure*

The Worldwide Church of God was founded by Herbert W. Armstrong some 46 years ago (originally as the Radio Church of God). It is a Christian church based upon fundamental teachings revealed in both the New and Old Testaments of the Bible.

Since its founding, the Church has flourished and grown to the point where it now has approximately 100,000 members worldwide (including baptized members and their dependent children). Of these, only about 10% reside in California. Herbert W. Armstrong has been the Church's spiritual and temporal leader since its very beginning, and in Church theology is the appointed apostle of Jesus Christ on earth, charged with the responsibility of fulfilling the Church's primary mission of spreading His gospel throughout the world.

The Church does not solicit funds from the public. Its members, however, tithe voluntarily and make other voluntary contributions from time to time. The Church also receives significant financial support from an even greater number of nonmembers, generally referred to

as co-workers (whose members are well in excess of 100,000). The Church's national budget last year was approximately $57,000,000. (It will be significantly lower this year.)

B. *The Church's Work*

Church funds are spent in furtherance of the Church's work, which includes the following:

1. A full range of Church programs and activities for Church members and families, including regularly scheduled religious programs and convocations, an international program of youth activities, and welfare and support programs for indigent members and families.

2. Worldwide travels by Mr. Armstrong and his staff for the purpose of meeting and speaking to millions of people through electronic and print media and otherwise carrying out the Church's primary mission of "spreading the Gospel to all nations." In the last 10 years, for example, Mr. Armstrong has averaged more than 200 travel days per year.

3. Publication and distribution of periodicals such as "Quest" magazine, "The Plain Truth," "The World-wide News," and "The Good News," together with numerous booklets.

4. Extensive television and radio broadcasting for the purpose of spreading the Gospel.

5. The support and operation of Ambassador College, located at the Church's headquarters complex in Pasadena, which trains approximately 350 students for the work of the ministry of the Church and also educates them in other areas.[1]

[1]The Church, as a rule, believes in putting its money in the Work rather than investing in monuments and edifices. As a consequence, its congregations usually meet in rented or leased halls or buildings, a fact which explains, perhaps, its rather low visibility outside of Pasadena. Church headquarters, Ambassador College and Ambassador Auditorium are located on a 50-acre campus in Pasadena. The Church is one of the largest private employers in Pasadena.

6. The production and presentation of concerts, opera, theater and other cultural activities (many children's programs are presented free of charge) funded by the Church and conducted through the Ambassador International Cultural Foundation. Performing artists include Artur Rubinstein, Vladimir Horowitz (his first West Coast concert in 30 years), Luciano Pavarotti, Beverly Sills, Mstislav Rostropovich, The Philadelphia Orchestra, and other first rank artists.

7. Numerous other charitable, educational, scientific and religious projects, including (a) Archeological excavations and exhibits in Israel (including sites at the temple mount and Jewish quarter in Jerusalem); (b) benefit funds for handicapped children in England and Monaco; (c) clinic for the under privileged in Cairo; (d) Institute for Political Research and Society for Near Eastern Studies in Tokyo; and (e) Nepal and Thailand mountain tribe education programs, to name only a few.

The Church's worldwide activities have received commendations and awards from heads of state and leaders of governments throughout the world, including the Bahamas, Belgium, Costa Rica, Egypt, Hong Kong, India, Iran, Israel, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Monaco, the Netherlands, the Philippines, South Africa, Spain, Sri Lanka, Tanzania and Thailand.

II

CHURCH'S FINANCIAL PROGRAM PRIOR TO RECEIVERSHIP

A. *Superior Bank Credit Lines*

Prior to the imposition of the receiver by the Superior Court, both the Church and the College enjoyed excellent credit with financial institutions and vendors. The Church's principal bank line of credit agreement provided for loans of up to $4,300,000, as follows: $1,000,000 unsecured line of credit for cash flow, interest at prime; $2,000,000 unsecured construction line of credit, interest at prime plus one-half percent, repayable at $75,000 per month plus interest; and $1,300,000 secured motor vehicle fleet line of credit, interest at prime plus three-quarters percent.

B. *Favorable Vendor Billing Practices*

Radio and television broadcasting constitute a major program of the Church. Annual expenditures for media time exceed $5,000,000. The general industry practice is to require religious, political, and other special interest groups to prepay all media time, generally 30 days prior to the air date. The Church, however, has enjoyed such excellent relations with radio and television stations that it had been able to secure time with payment due 30 to 60 days after our program was presented. This open credit was a significant source of financing for purposes of regulating cash flow.

C. *Additional Credit Lines*

In addition to lines of credit, both the Church and the College were previously able to obtain additional financing for the purchase of real and personal property, secured by such property, and for general operating

purposes through the pledge of otherwise unencumbered real and personal property.

D. *Balanced Cash Flow*

The cash flow of both the Church and the College is seasonal and subject to fluctuation. Because of the significant, predictable fluctuations, borrowings for purposes of balancing cash flow are necessary to fund all operations of the Church. Salaries, debt-service, utilities, Church hall rentals, maintenance, and other major expenses are all fixed and incapable of being significantly deferred. Therefore, any interruption of cash flow impacts most heavily on other Church activities, which unfortunately include the Church's main charitable and educational endeavors.

III

DESTRUCTIVE ACTS OF THE RECEIVER AND THEIR IMPACTS ON THE CHURCH PROGRAM

A. *Destruction of the Church's Credit Lines*

On January 3, 1979, when the ex parte receivership was placed upon the Church, one of the receiver's first official acts was to notify principal banks of his authority. Because of his order, the bank returned all outstanding checks, stamping them "refer to maker," which is the same notation often used when they are returned for insufficient funds (i.e., bankruptcy). The Church had approximately one million dollars in outstanding checks that were "bounced" by this action of the receiver. The checks were to important creditors, such as radio and television stations that carried the Church's religious programming, as well as to dependent widowed members and/or their families.

The damage to our credit rating was enormous. It was made even worse by our inability to answer vendor inquiries because all accounting personnel were locked out of their offices by the receiver and denied all access to the Accounting and Data Processing facilities until noon, January 9, 1979. The telephones, therefore, went unanswered.

The bank immediately offset cash in our accounts of $1,349,000 against our outstanding lines of credit, then totally cancelled the credit lines.

B. *Destruction of Orderly Cash Flow*

Not surprisingly, vendors began to demand cash in advance for C.O.D. terms. The largest independent radio station in the New York market, WOR, where we were the first religious programming they accepted, immediately notified us of cash-in-advance terms.

On January 19, 1979, the receiver sent a telegram to the Church's ministry worldwide (evidently from a ministry list he confiscated) forbidding them to make contributions to Mr. Armstrong, who resides in Arizona, and forbidding the Church's leaders from soliciting or diverting contributions to any location except Pasadena. (The text of this telegram is set forth as Exhibit A hereto.)[2] The resulting confusion caused a drop in expected revenues during the balance of January and February of about $2,750,000. This, coupled with the total destruction of our credit and the bank's appropriation of $1,349,000 in our accounts to discharge an existing loan, dried up our cash flow. In addition, the receiver spent approximately $150,000 of the

[2]This is a remarkable claim of jurisdiction over the Church's worldwide membership (only 10% of the Church's members reside in California).

Church's funds for his own expenses, and the Church has incurred and will continue to incur enormous legal expenses in resisting the present action.

C. *Sale of Big Sandy Campus*

When the present lawsuit began, we were in escrow to sell the Church's college campus in Big Sandy, Texas, for $10,600,000 cash. This would have netted the Church about $10,000,000, which we had arranged to invest at 10%, thereby gaining $1,000,000 per year in additional operating revenue. At the same time, the sale would have relieved us of a maintenance burden running $100,000 per month for a campus we were no longer using. The net effect would have improved our cash flow by over $2,000,000 per year. Instead, although the receiver ultimately approved the sale, the buyer cancelled. We are now trying to revive the sale, but, if we do, it will be on less favorable terms because, among other reasons, some of the buyer's financial sources are reluctant to finance the purchase of a property in receivership. An all-cash sale now appears highly unlikely.

Moreover, even if a sale is consummated, our loss of investment income and continuing cost of maintenance of the campus is running a cumulative deficit or loss of about $180,000 per month.

Based on what has occurred to date, we project an irretrievable loss this year in excess of $5,000,000 as a result of this lawsuit, particularly as a result of the receivership.

IV

ADVERSE EFFECTS OF RECEIVERSHIP AND LAWSUIT ON CHURCH PROGRAMS

A. *Youth Programs*

The Church maintains a nationwide youth program for nearly seventeen thousand young people (ages from 12 to 19)—this includes basketball, volleyball, track and field, cheer leading, music, literature and art. Each year local, regional and national competitions are held to encourage the youth to improve their skills in each of these activities. Youth counselors are church members with special talents and training to direct these activities and to furnish moral teaching in line with the precepts of the Church. Because of the receivership, it was necessary to eliminate the national programs for one year and greatly curtail the regional programs. Local programs have been reduced to those activities that can be funded locally.

Because the youth of the Church represent the future growth and leadership of the Worldwide Church of God, this reduction and potential loss of young people has caused great concern for the future of the Church.

B. *Festival Operations*

The Church has an annual seven-day convocation called the Feast of Tabernacles in the fall of each year. This is the high point of our religious calendar and is a time where all family members attend a Church convention in twelve selected sites throughout the United States. Because of the receiver, it has been necessary to reduce the travel allocation to indigent families and widows by $175,000. This will mean that from 300 to 500 families will not be able to attend these important religious events.

C. *Terminations*

Ninety employees, including ministers, were laid off as part of the budget reductions caused by the imposition of the receiver. The termination of certain key employees has added to our overall difficulties. Some of these people will be impossible to replace at any price.

D. *Newsstand Distribution Program*

One of our key methods of distributing our international magazine (*Plain Truth*, circulation nearly two million) is via the Newsstand Distribution Program. This program has had to be reduced by 40% for the next year. At the same time, we have been forced to reduce the number of pages in each issue, thus lessening the overall impact and message that each issue can carry.

E. *Church Educational Programs for the Handicapped*

The Church has an active program for the handicapped (deaf, blind) by which specially trained individuals provide seminars and tape cassette programs for those handicapped individuals. These programs have had to be drastically reduced or eliminated for one year. In addition, our nationally acclaimed program on Alcoholism (booklets, films, and speakers) has also been greatly reduced.

F. *International Programs*

Over two million dollars is allocated to programs for the international aspects of our Work. These programs provide printed materials (*Plain Truth*, booklets and reprint articles) as well as salaried U.S. ministers (trained at Ambassador College) in over 30 foreign

offices. These programs have been drastically curtailed and in some areas eliminated.

G. *Construction*

All construction projects have been eliminated and only those projects that are essential to the safety and vital maintenance of our 50-acre Pasadena facilities have been allowed. Building maintenance and grounds maintenance have been drastically reduced. Ambassador College grounds have been awarded a number of certificates of excellent in the past five years. Improvement programs have been put off for one year.

H. *Education and Training of Employees*

Because of the receiver, it was necessary to eliminate most of our employee educational and seminar training programs. These programs are used to keep the necessary skills of our professional people at a high level. Data Processing, Publishing and Media fields are constantly changing, and it is vital that our technical people keep up with the state of the art. Because these advantages are not offered this year, it may deter new staff members from joining our organization and may influence others to seek employment in other organizations.

V

CONCLUSION

We are trying to restore our normal operations, but with the imposition of the receivership in the current lawsuit, we are experiencing great difficulty.

Because of this lawsuit and particularly the receivership, prospects for future revenues and conventional assistance from financial institutions is bleak at best. Vendors are reluctant to extend the normal credit terms

that they have given us for years. We have been unable to find any bank which will give us credit even though we are able to generously collateralize our loans. Famous artists are reluctant to perform in our performing arts facilities lest they somehow become affected by the current litigation.

As long as this cloud remains over our heads we will continue to suffer irreparable damage. This unfortunate condition will continue until the Church, which thousands of people have worked so hard to build, has either been vindicated or destroyed. We are presently paying a fearful price in pursuit of our vindication.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on this 11th day of April 1979, at Pasadena, California.

/s/ Willis J. Bicket
WILLIS J. BICKET

EXHIBIT A

(The text of telegram of January 19, 1979 is set forth as Exhibit A hereto.)

"Church members Worldwide Church of God are not permitted to make contributions to Herbert Armstrong or his representatives for Church purposes or on behalf of the Church.

"California Court ruled Worldwide Church of God, Church related corporations, Herbert Armstrong, Stanley, other defendants, are prohibited from diverting contributions from Worldwide Church's Headquarters, Pasadena, California to other locations. Defendants are prohibited from soliciting or causing Church contributions to be made payable to anyone or to any location other than the Worldwide Church of God.

Steven S. Weisman
Court Appointed Receiver
Worldwide Church of God"

APPENDIX D.

The following excerpts from the trial court proceedings set forth the Attorney General's and the trial court's theory and understanding of church-state relationship under the First Amendment and the extent of permissible state involvement in church affairs. As indicated, the quoted statements are by Mr. Hillel Chodos, who was initially attorney for the relators, then Special Deputy Attorney General and at all times principal spokesman for the Attorney General; Deputy Attorney General Lawrence Tapper; Retired Judge Steven Weisman, the first receiver; and the trial judges who heard the various motions. Reference is made to the comments of Mr. Browne, counsel for the Church, where necessary to place the response of others in context. Transcript references are in chronological order.

FROM THE JANUARY 2ND *EX PARTE* HEARING FOR APPOINTMENT OF RECEIVER:

Pages 3-4:

MR. H. CHODOS: If I can just make a few observations. First of all, I recognize that any request for an ex parte receiver, without notice, has to be viewed against a strong presumption that it is an emergency measure to be used with great caution. I would suggest to you, however, that at least insofar as pertains to the Worldwide Church of God, Inc., Ambassador College, Inc., and Ambassador International Cultural Foundation, Inc., that the usual principles are not applicable. All of those corporations are organized and existing under California law, exclusively for charitable, religious and educational purposes. It is our position that a shorthand way of describing the law applicable to

the corporation of that type is that their property always and ultimately rests in the Court's custody, and they are always and ultimately subject to the supervision of the Court on the application of the Attorney General. In effect, there are no private interests. The Court is not taking something away from somebody or interfering with anyone's private rights. In effect, what we are saying is that there are presently trustees who have been allowed to manage the charitable fund on a day-to-day basis. There is reason to believe, as we have shown you, that they have not done their job in a faithful manner. We believe that essentially those trustees serve at the Court's pleasure, and may be replaced with a more trustworthy trustee.

THE COURT: I don't have any quarrel with that up to there, . . .

Page 7:

MR. TAPPER: . . . But the records we are talking about are public records, just as the assets that Hillel, in describing the charitable organizations, are also public assets.

FROM THE JANUARY 5TH HEARING ON MOTION TO VACATE ORDER APPOINTING RECEIVER:

Pages 51-52:

[Question By Mr. Browne To Receiver Weisman]: . . . With regard to those various aspects you have mentioned, radio time, TV time, literature, aren't there programs domestically and abroad the money is used for, culturally and educationally and religiously?

[By Receiver Weisman]: A I have heard that, but that is still hearsay, Mr. Browne. I can't get the records.

Q And you now have the authority then to decide whether or not funds may be spent on any or all of those projects; isn't that true?

A Yes. But that's why I appointed Mr. Cole as my executive officer, because he's going to run the church end. I am just there temporarily, and I wish I weren't, I'll be frank with you. I am there temporarily to marshal the assets to see that no more money is being unnecessarily spent.

Q But at this point in time, you perceive your function as being the ultimate authority in whether funds are spent or not spent; isn't that true?

A Yes. But I take advice from my executive officer.

Q But if there is a disagreement, one man has to stand up and be counted, and you would have the ultimate decision, would you not?

A I think so.

Page 70:

[Receiver Weisman]: A I am not concerned with the spiritual part of the church; it is not my business.

[By Mr. Browne]: Q Well, wouldn't you agree with me, Judge, that in deciding where funds are to be spent on programs of the church, media time, whether to support particular other charities, that that, in effect, is action in the ecclesiastical sense?

A Might be, might not be; I don't know.

MR. H. CHODOS: Objection, Your Honor. . . . I am shocked to hear Mr. Browne suggest that money that is contributed to this church, college and foundation can somehow be diverted to support other kinds of charities. That is against the law. . . .

. . .

THE COURT: This is perhaps a good time to point out, what is the purpose of this church? I have nothing before me in the way of articles or bylaws or anything to tell me what the purpose of this church is. . . .

Page 97:

[MR. CHODOS]: . . . every court that has considered the [First Amendment] issue since the beginning of Anglo-American jurisprudence has rejected the argument on which counsel's presentation is based. Because this court is the perpetual, ultimate, continuing custodian of charitable funds, and that custody and the powers and duties that flow from that custody under the law have nothing to do with the First Amendment.

Now, Mr. Browne, as every one of his predecessors in a similar situation, says, well, the money and the religious matters are intertwined, because if you can't spend the money to do this or that kind of religious activity, you are interfering with the exercise of religion.

Well that's not going to happen here. Judge Weisman has no intention of it happening. Judge Pacht had no intention of it happening when he made this order, and there is nothing in the order to deal with that.

FROM THE HEARING OF JANUARY 10-12TH RE APPOINTMENT OF RECEIVER PENDENTE LITE:

Pages 7-8:

MR. CHODOS: Because of the nature of the church, as a charitable trust, the relationship of the court to the church is unique.

Every other party who comes before the court has some claim to its own property, and has some right to resist intervention by the court. But for 700 years, Your Honor, it has been the law in England and

America that charitable funds are public funds. They are perpetually in the custody of the court. The court is the ultimate custodian of all church funds, just as the Attorney General has always been charged with the power and the duty to investigate allegations of misuse or even suspicions of misuse. And the point that I am trying to make, Your Honor, is that the charitable funds is the res or subject matter of this proceeding. It isn't a party in the usual sense. It is in Your Honor's safekeeping. It has no interests to protect against the court. Your Honor has the power and the discretion to safeguard and preserve those assets and the duty to do so. But the church, as a charitable trust, has no interest to protect here. It has no client. It is the court's funds and the court may remove and replace and substitute trustees at its pleasure.

Just as Judge Weisman would have no standing to oppose your decision to remove him, if you were to do it 10 seconds from now, he couldn't hire a lawyer to argue that he should remain in office. So the trustees of that fund have no standing. And the fund itself, Your Honor, has no interest other than to be preserved and to be applied for the charitable uses for which it was created.

Pages 9-11:

[MR. CHODOS]: It is Your Honor's responsibility, as we see it, to do whatever needs to be done to appoint receivers and other agents to do whatever needs to be done to preserve it and protect it, protect the assets and records, and no one has any basis to resist that intervention.

If there is the slightest hint or suspicion—and I submit to you have we have raised it by our papers

in ample measure—if there is the slightest hint or suspicion of wrongdoing, let alone proof positive or proof by a preponderance, it is the court's duty, as I understand it, to see to it there is a worthy trustee installed, that an investigation is made, that the facts are exposed.

. . .

[MR. CHODOS]: Mr. Rader—Mr. Armstrong is the spiritual leader of this church, and he has the faith and devotion of the members.

And I would agree—and the Attorney General will agree—that it's beyond our power or your power to interfere in any way with his ecclesiastical decisions or ecclesiastical supremacy. We have no desire to do that.

But the church funds, Your Honor, do not belong to Mr. Armstrong. They don't belong to Mr. Rader. To the extent they have collected funds through a California charitable corporation, those funds are impressed with the trust over which Your Honor is the supervisor. This court, in the exercise of its equitable powers, is the supervisor.

Page 12:

[MR. CHODOS]: What I'm suggesting is this church doesn't need a lawyer to help this court protect its assets. We are satisfied that on the application of the Attorney General and a proper showing, this court will provide whatever protection the assets of the church need. . . .

. . . It's Your Honor's charge. You are the guardian and this church is your ward.

. . .

Page 13:

MR. CHODOS: No. I don't think the church has a single interest that needs counsel before Your Honor. In my view, the church ought to welcome, ought to welcome the supervision of the court.

. . . People send in their money, their tithes to do what they believe is God's work. We have shown you, Your Honor, and I believe we will show you today, that the money is not being used for God's work. . . .

Page 26:

MR. CHODOS: That is right. The church doesn't need representation, because the only thing that can happen to it is something good, because that is what we are asking for.

In other words, if we prevail, it is for the benefit of the church.

We are trying to preserve the assets.

THE COURT: So it follows the church doesn't need counsel at this moment.

MR. CHODOS: That is right.

Page 46:

RECEIVER WEISMAN: . . .

Now, under Judge Pacht's order, as I read it, I was granted the normal full rights as a receiver, in other words, to come in and take over and run the thing, and all that, which contemplates in my mind a large staff to come in and run this thing.

Page 94:

MR. BROWNE: . . . But the point is there is no way a receiver or any other person can have any

control over the financial aspects of this church and not impact the spiritual quality.

. . .

Page 98:

MR. BROWNE: I'm trying to point out that the financial aspect of this church is so interwoven with the fabric. It would seem to me the next point is to ask the Pope how many people he has surrounding him; does he have ten administrative aids or 25.

THE COURT: . . .

If this is construed as a motion to deny the receiver as a matter of law, because it involves the church, the motion is denied.

Page 139:

[MR. CHODOS]: Your Honor, you will need, we are satisfied, a firm, complete and total control of the financial and business affairs through a receiver until such time as those people who are attempting to influence the membership to resist rather than cooperate can be persuaded or somehow made to withdraw their incitement to resist us.

Page 180:

[MR. CHODOS]: You can't run an operation—I intend to show, Your Honor, that since a court order was made last week, there has been nothing but chaos because there has been massive resistance and disobedience on such a continuing basis that to bring it before the Court a week or two weeks or four weeks from now and give notice and have a hearing would be not only an idle act, but an impossible burden for the Court—this Los Angeles Superior Court to carry.

Page 312:

[MR. CHODOS]: But the court, and only the court, has the power and the duty to enforce the charitable trust. and what I am trying to tell you, Your Honor, if you issue an injunction, who do you think is going to prepare the contempt papers and come to court and litigate it if it is not obeyed? Who do you think is going to watch it? Who do you think is going to take depositions? Not me.

Pages 361-363:

[MR. CHODOS]: He [Mr. Browne] started with the premise that we have a heavy burden of proof. And I suggest to Your Honor that that may be true in an ordinary receivership action between private parties, where private interests are at stake, but where charitable trusts are concerned, it is the opposite which is true. Once the slightest showing sufficient even to raise the court's eyebrow has been made before the court to suggest that there may perhaps be improprieties in the administration of a charitable trust, the presumptions all operate the other way, and the trustee has the burden of coming forward and showing that everything has been fair and regular, and that burden, Your Honor, has not been carried and no attempt has been made to carry it.

Counsel tells you that a receivership is the most drastic remedy, and that may be where the court attempts to interfere with private rights. In cases like that, the Fourteenth Amendment and the due process clause of the California Constitution interpose themselves between the court and the private party. But there are no private rights here. This money is public money. This court is the guardian of it today; it was the guardian of it last week; it was the guardian

of it in 1948, and it will continue to be the guardian of this money as long as the charitable trust continues to exist.

And I would suggest to the court that it is no more drastic for the court to replace Mr. Rader as the custodian of this trust with Judge Weisman, than it would be for the court to replace Judge Weisman with someone else. This court has the power to remove and replace trustees of a charitable trust at its pleasure, in order to assure itself that there should never be the slightest question or possibility of dissipation of charitable trust assets.

. . . What I do know is that Mr. Armstrong and Mr. Rader and their henchmen, who are part of the palace guard who have been brought here to court to foist off their claims upon you, are the takers, not the givers.

The givers are the people all across the country who send in their tithes and their double tithes and their offerings, and that, Your Honor, it is not because they have faith in Herbert Armstrong, but because, I presume, they have faith in God, and because they have believed that Herbert Armstrong and the man he has unfortunately chosen to deputize with control of this church are faithful trustees of God's work. . . .

Page 375:

[MR. CHODOS]: What I am saying, the judge—Judge [Receiver] Weisman has to have control over the funds so he can hire people to help him. He has to have control over the premises so he can keep people off if they are getting in his way. And Your Honor has to rely on him and on yourself not to exercise those powers of possession in such a way as to interfere with ecclesiastical functions.

Pages 378-379:

RECEIVER WEISMAN: Now, if I were given a complete staff and could have some kind of independence, that is the only way I would operate.

And if I have to operate under any of the present conditions, I am not going to do it. And I am waiting to find out what kind of an order you will give, because with all due respect to the court, I asked you the other day to protect me. Remember? Well, with all due respect to the court, if an order comes out that I can't live with, I want to tender my resignation. Either I do it right, or I don't do it at all.

THE COURT: Are you saying that there would be a material or not a material difference, assuming that you had all the control that you had.

JUDGE WEISMAN: All the control I would need would be to be able to hire and fire people, including Mr. Rader.

Pages 380-381:

[MR. BROWNE]: Your Honor, with all due respect, the problems inherent in turning an entire church and its financial operation over to a receiver is so repugnant to the First Amendment, I cannot—

THE COURT: We have been all through that, Mr. Browne.

MR. BROWNE: I know that.

THE COURT: There is no point in going into it again. I understand your position clearly.

I don't agree with your position in that regard.

Pages 381-383:

MR. CHODOS: And the point I am trying to make is if the word receiver frightens people, then you ought

to call him what he really is, which is a temporary trustee appointed by the court, until the court can be assured. The only other thing we are asking for is two things in the lawsuit. That an accounting be prepared, and that some procedure be devised for selecting an independent board of trustees, or whatever you call it, who will provide some check and balance on the financial aspect of this enterprise, insofar as it is a financial enterprise.

. . .

What I'm saying is whoever is out there has to know that they owe their allegiance to God but work for Judge Weisman, whatever you want to call it, they are working for a paycheck.

They work for him, the trucks, the buildings, the telephone, and the bugging system, if there is one, is his, and everything is his, so he can see that it's right.

APPENDIX E.

Order Appointing Receiver Pendente Lite; Injunction Pendente Lite.

Superior Court of the State of California for the County of Los Angeles.

The People of the State of California, *ex rel.* Alvin Earl Timmons, et al. Plaintiff, vs. Worldwide Church of God, Inc., a California Corporation, et al., Defendants. Case No. C 267 607.

Filed: January 19, 1979.

The order to show cause re receiver and injunction pendente lite in the above-entitled cause came on for hearing in Department 3 of the above-entitled Court on January 10, 1979, before the undersigned. Plaintiffs and relators were represented by: Lawrence R. Tapper, Deputy Attorney General; Hillel Chodos; Hugh John Gibson; and Rafael Chodos, Esqq., and defendants were represented by Ervin, Cohen and Jessup and Allan Browne, Esq. After full consideration of the moving and responding papers filed in the matter, and after consideration of additional evidence and argument both oral and documentary presented at the hearing, and after due consideration of all matters presented, the Court makes the following Order:

ORDER

1. *Prior Orders Superseded.* All prior orders regarding the appointment of the receiver, and all prior injunctions and restraining orders, are hereby vacated and dissolved, and superseded by this Order.

2. *Receiver Appointed Pendente Lite.* Steven S. Weisman, a retired Judge of the Superior Court, heretofore appointed *ex parte* as temporary Receiver, is hereby

appointed Receiver pendente lite over all the financial and business affairs of the Worldwide Church of God, Inc., Ambassador College, Inc., and Ambassador International Cultural Foundation, Inc. (hereafter referred to collectively, except where the context otherwise indicates, as "the Church"), to carry out the duties which are specified in this Order; and his original Oath and Bond, filed herein on January 2, 1979, shall continue to stand until further order of Court.

3. *Assets and Property.* The Receiver is to take possession and control of the Church, including all of its assets, both real and personal, tangible and intangible, of every kind and description, except as is otherwise provided in this Order.

4. *Church to Continue to Function.* In spite of this order of possession, it is further ordered that all the authorized employees of the Church shall be permitted to continue to carry out their duties and to continue all activities and operations of the Church. The Receiver nevertheless shall have the right and power to supervise and monitor all of the business and financial operations and activities of the Church; however, he shall not interfere therein unless he determines, in the sound exercise of his sole discretion, that such interference is necessary to avoid damage or loss to the Church of any kind. And if he does so determine, then he shall have the right to take over management and control of the Church to whatever extent that he, in the sound exercise of his sole discretion, deems necessary.

5. *Assistants.* The Receiver is empowered to hire, employ and retain lawyers, accountants, appraisers, business consultants, computer experts, security guards, secretarial and clerical help, and employees of all sorts

to assist him in the discharge of his duties pursuant to this Order; and he is authorized to pay reasonable compensation to all his assistants out of the funds and assets of the Church, subject to the supervision of this Court as hereafter provided.

6. *Records.* The Receiver is to take immediate possession of all books and records of the Church, no matter where or in whose possession said records may be found. These records are to include without limitation journals, ledgers, bank statements, vouchers, invoices, logs, memoranda, computer-readable data, and membership lists. These books and records shall be made available for the use of the employees of the Church in the carrying out of all their duties. They shall also be made available to the representatives of the plaintiffs in this action, for use in preparing for the trial in this action.

7. *Operations.* The Receiver is to supervise and control all the business and financial operations of the Church, including both ordinary day-to-day operations, and extraordinary operations. And while it is ordered that the Receiver shall not interfere with the normal business and financial operations of the Church unless he deems it, in the sound exercise of his sole discretion, to be necessary so to interfere; to that extent he will have the right, and it is hereby ordered, that the Receiver has the right to take over any portion of the operation of the business and financial affairs of the Church that he deems necessary in order to protect the Church and its assets.

8. *Termination of Employees.* Except as is otherwise provided herein with respect to Messrs. Herbert W. Armstrong and Stanley Rader, the Receiver is hereby authorized to suspend or terminate, as he

in the sound exercise of his sole discretion determines is necessary, any employee, officer, or agent of the Church, (subject to any contractual employment rights the suspended or terminated party may have), and to direct that said employee, officer or agent not be permitted access to any of the grounds or facilities of the Church from and after the date of such termination or suspension.

9. *Messrs. Armstrong and Rader.* Messrs. Armstrong and Rader will be permitted to continue their prior functions as representatives and authorities of the Church unless and until they are, either of them, removed by proper action of the Church pursuant to its By-laws and Articles; or unless they are removed by further order of this Court pursuant to an application on the part of the Receiver. If the Receiver deems it necessary at any time hereafter pending the trial to move the Court to remove either Mr. Armstrong or Mr. Rader or both, the Receiver may file a petition with the Court on notice to the defendants, and the Court will hear the matter and make a determination on that issue. However, subject to their rights under the existing employment contracts which Messrs. Armstrong and Rader have, to the extent that those rights may hereafter be determined by the Court, their compensation for services and their reimbursement for any expenses they may incur in the course of their employment by the Church, shall only be in such amounts as may be determined by the Receiver in his discretion from time to time.

10. *Non-Interference By Receiver in Ecclesiastical Affairs.* It is not the purpose or intention of this Order to allow the Receiver to interfere in any way with the ecclesiastical functions of the Church (as

distinguished from the College or the Foundation); and he shall not do so. This Receivership concerns itself exclusively with the financial and business affairs of the Church. The ecclesiastical affairs of the Church shall continue to be controlled and directed by its duly authorized ecclesiastical authorities. Notwithstanding the authority of the Receiver to terminate or suspend persons from employment pursuant to Paragraph 7 above, such termination or suspension shall in no way affect their membership or standing in the Church.

11. *Disputes as to whether a given matter is ecclesiastical.* In the event of any dispute between the Receiver and the ecclesiastical authorities of the Church (as opposed to the College or the Foundation) over whether or not a particular matter is ecclesiastical, the authorities aforesaid are authorized to employ counsel to apply to this Court for a resolution of said dispute; and said counsel may thereafter apply for reasonable compensation from the Church funds pursuant to Court order.

12. *Accounting of Church Affairs.* The Receiver is authorized and instructed to employ, to the extent necessary, accountants, auditors, and attorneys to conduct a thorough audit of the financial and business dealings of the Church; and to compensate said professional assistants out of the Church treasury, subject to supervision by this Court as hereafter provided. Moreover, the Receiver is to review all allegations of malfeasance and neglect concerning the financial and business affairs of the Church, and to apply to this Court where appropriate for leave to sue on behalf of the Church for suitable relief.

13. *Funds.* It shall not be necessary for the Receiver initially to take possession of, nor to deposit in any

special Receiver's account, the funds of the Church now or hereafter received by the Church; but the Receiver shall supervise the deposits and disbursements of the funds by the Church in accordance with the terms of this Order. The funds of the Church shall continue to be handled by its employees in the same manner and with the same bookkeeping, accounting and disbursement procedures as were in effect at the time of the commencement of the *ex parte* receivership, subject to the supervision of the Receiver. But in any event, the Receiver shall have the right, in the sound exercise of his sole discretion and at any time, to take possession and control of the funds of the Church forthwith by notification to the Court and to the defendants, and to deposit them in a special Receiver's account, if he deems it necessary.

14. *Sale of Big Sandy.* Unless the Receiver files a motion with the Court within ten days after the date of this Order opposing the sale of Big Sandy for good cause, that sale shall go forward as a cash sale for $10.6 million, all funds payable directly to the Church.

15. *Supervision by the Court of receivership expenses.* The Court hereby approves and ratifies the transfer by the Receiver of $50,000.00 to a special Receiver's account, and the payment therefrom by him of sums for security guard service, locksmith service, and accountants, and the payment to himself and his attorney of $1000.00 each on account of fees.

As soon as reasonably practicable, the Receiver shall present a petition to this Court outlining the nature and extent of the expenditures he anticipates have been or will be necessary for the discharge of those of his duties herein which are peculiar to this receivership, and he shall seek approval or ratification of this Court to incur and pay such expenditures. Pending the presentation and determination of said petition, the Receiver is authorized to incur and pay such expenses as in his discretion are necessary or expedient to the immediate discharge of his duties.

The Receiver shall not be required to seek advance approval of this Court for expenditures associated with the day-to-day operations of the Church.

16. *Attorneys' Fees To Be Approved By the Court.* Pursuant to representations made to this Court by counsel for defendants on January 10, 1979, and on January 16, 1979, this Court hereby approves the payment on January 9, 1979 of $30,000.00 out of Church funds to Ervin, Cohen and Jessup, and the payment on the same date of $6,000.00 out of Church funds to Coombs, Gittler and Hauser, for services allegedly rendered by those law firms to certain of the individual and corporate defendants for whom they have appeared of record herein; provided however, that said approval is without prejudice to subsequent review by the Court, upon its own motion or upon the application of an interested party, to review the reasonableness and propriety of said payments, and to direct that all or a portion of said sums be returned to the Church, either by the said law firms, or by one or more of the individual defendants.

The remainder of attorneys' fees received by said firms on January 9, 1979 (ie. the remaining $20,000.00 paid to Ervin, Cohen and Jessup, and the remaining $4000.00 paid to Coombs, Gittler and Hauser) are to be repaid to the Receiver forthwith.

Except as provided in the foregoing, no further attorney's fees or legal fees shall be paid out of Church

funds in connection with this litigation except after proper application to and approval by this Court. This prohibition shall extend to payment of attorney's fees to attorneys representing the plaintiff, the relators, the defendants or any of them, or the Receiver.

INJUNCTION

Until a final disposition of this matter is made, the defendants and each of them, and their agents, employees, and all persons acting in concert with them, are hereby enjoined and restrained from interfering with or obstructing the Receiver in the discharge of his duties, or from withholding from him any of the funds, assets, properties, books, or records of the Church; and are further enjoined and restrained from selling, mortgaging, encumbering, or otherwise disposing of any of the assets of the Church or its associated corporations.

DATED: January 19, 1979.

JULIUS M. TITLE
JUDGE OF THE SUPERIOR COURT

APPENDIX F.

Superior Court of the State of California for the County of Los Angeles.

Filed: Jan. 17, 1979.

The People of the State of California, ex rel., Alvin Earl Timmons, et al., Plaintiffs, vs. Worldwide Church of God, Inc., A California Corporation, et al., Defendants. Case No. C 267 607.

Order Approving the Actions of Receiver.

On reading the verified application of JUDGE STEVEN S. WEISMAN, Receiver in this proceeding for an Order approving said Receiver's January 15, 1979 action whereby he stopped and recalled the attempted mailing to approximately sixty-thousand (60,000) members of the Worldwide Church of God of Defendant Herbert W. Armstrong's letter dated January 14, 1979, the Law Offices of Michael J. Clemens, by Michael J. Clemens, Esq., appearing for the Receiver, and the Law Firm of Ervin, Cohen and Jessup, by Allan B. Cooper, Esq., appearing for the Defendants, and the Court having considered the record and files in this matter, the aforesaid Application and the Exhibits attached thereto, and having heard the arguments of counsel and being fully advised in the premises, finds as follows:

1. That those portions of Defendant Herbert W. Armstrong's letter of January 14, 1979 which specifically relate to the members or prospective donors of the Worldwide Church of God making their monetary donations payable to said Defendant Herbert W. Armstrong personally and directing them to mail said donations to said Defendant Herbert W. Armstrong, c/o General Delivery, Tucson, Arizona, are in direct contra-

vention and violation of the intent, spirit and provisions of the pronounced order of this Court orally issued on January 12, 1979, whereby, *inter alia,* the Defendants, and each of them and their agents and employees acting in concert with them, were enjoined and restrained from interfering with or obstructing the Receiver in the discharge of his duties or from withholding from him any of the assets of the Church.

2. That it is admitted by the Defendants that the Church receives at its World Headquarters, Pasadena, California, donations from contributions which amount to approximately seventy million dollars ($70,000,000.00) each year and that said contributions constitute the major asset of the Church.

3. That said Receiver acted correctly and efficiently in the performance of his duties of protecting and preserving the financial assets of the Church by stopping and recalling the mailing of said letter of Herbert W. Armstrong which called for contributions to be made payable to Herbert W. Armstrong personally and directing them to be mailed to Mr. Herbert W. Armstrong, c/o General Delivery, Tucson, Arizona.

IT IS ORDERED that the application of Receiver is granted and the action of the Receiver, which resulted in the stoppage and the recall of the mailing of Defendant Herbert W. Armstrong's letter of January 14, 1979, is hereby approved and ratified.

IT IS FURTHER ORDERED that in addition and supplementary to the previous order of this Court, and until there has been a final disposition of the matter by trial and a Judgment of the Trial Court, the Defendants, and each of them and all their agents, employees and all persons acting in concert with them, are hereby enjoined and restrained from diverting, or

attempting to divert, the sending of contributions to the Church's World Headquarters in Pasadena, California, and are further restrained and enjoined from soliciting or causing Church contributions to be made payable to anyone other than to the Worldwide Church of God or to be mailed to any location other than to said Worldwide Church of God, either at its World Headquarters in Pasadena, California, or to any of said Church's various branches throughout the world. It is the intent of this Order to ensure that the solicitation of Church contributions and the receipt thereof by the Worldwide Church of God shall continue in the same fiscal manner as existed prior to the ex parte appointment of the Receiver herein.

DATED: January 16, 1979.

/s/ Julius M. Title
JUDGE OF THE SUPERIOR COURT

APPENDIX G.

Superior Court of California, County of Los Angeles

Date: March 12, 1979.

HONORABLE: JULUS M. TITLE, JUDGE.

G. TORRELLAS, Deputy Sheriff.

G. HASSEN, Deputy Clerk.

G. SCAVARDA, Reporter.

The People of the State of California vs. Worldwide Church of God, Inc., et al. C 267 607.

Hillel Chodos & L. Tapper (for Plaintiffs), M. Clemens, R. Nutter and J. Jaenicke (for Receiver), Aulana L. Peters (for Accountants), Arnold D. Larson (for Intervenor), Allan Browne, W. Morgan and E. Horvitz (for defendants).

NATURE OF PROCEEDINGS: Hearing on Final Accounting of Receiver, etc.

Matters come on for hearing. Hillel Chodos' motion for attorney fees and costs is denied without prejudice. The Court declares that it will not take oral testimony on the final accounting of the former Receiver, but will decide the issue on the further written objections, declarations and points and authorities of counsel. All subpoenas issued for today's proceedings are ordered quashed. The former Receiver shall make available to the defendants, for examination in the Receiver's offices, all records, bills, vouchers, etc., including attorney time records. The accounting firm of Peat, Marwick and Mitchell shall also make available to the defendants all of its records on the final accounting. Said examinations by the defendants shall be completed on or before March 16, 1979 and their objections in reference to the final

accounting shall be delivered to the Court on that date. Counsel for the Receiver is directed to file, on or before March 14, 1979, declarations setting forth their theory on the refusal of payment for the services of the security firm, Boyd and Associates. Any reply by Boyd and Associates shall be filed on or before March 16, 1979.

Defendants' motions for leave to sue Receiver Steven Weisman and to increase the amount of his bond are denied. Defendants' motion for undertaking on granting injunction pursuant to CCP 529 is denied. The declaration of Willis J. Bicket is ordered filed.

The Court finds that the taking of the appeal by the defendants from the Court's order of March 2, 1979, is not per se violative of said order, but nevertheless the status quo of the assets and records must be maintained pending appeal. The Court vacates its prior orders re the dissolution of the Receivership and appoints David L. Ray as Receiver on terms and conditions enunciated by the Court in open court this date and as contained in the notes of the official court reporter. Counsel for the Plaintiff is directed to prepare a written order. Said Receiver is directed to file a bond in the amount of $10,000.00. The Court sets the amount of a bond to stay Receivership pending appeal at $1,000,000.00. Pursuant to request of Plaintiff, the Court directs that the record reflect that Stanley R. Rader is present in Court this date.

A copy of this minute order is mailed to all counsel this date.

Order Appointing Receiver Pendente Lite; Injunction Pendente Lite.

Superior Court of the State of California for the County of Los Angeles.

The People of the State of California, *ex rel.* Alvin Earl Timmons, et al. Plaintiff, vs. Worldwide Church of God, Inc., a California Corporation, et al., Defendants. Case No. C 267 607.

Filed: March 16, 1979.

After due hearing before the undersigned in Department 48 of the above-entitled Court on March 12, 1979, plaintiffs and relators appearing by Lawrence R. Tapper, Deputy Attorney General; Hillel Chodos; Hugh John Gibson; and Rafael Chodos, Esq. and defendants appearing by Ervin, Cohen and Jessup and Allan Browne, Esq. and defendant, Stanley Rader being present in Court at said time, and after due consideration of all matters presented, the Court makes the following Order:

ORDER

1. Paragraph #1 of the prior Order dated 3-2-79 entered herein dissolving the Receivership in this action is hereby vacated and is superseded by this Order.

2. David L. Ray is hereby appointed the receiver pendente lite over all the financial and business affairs of the Worldwide Church of God, Inc., Ambassador College, Inc., and Ambassador International Cultural Foundation, Inc.

3. Those corporations will be hereinafter referred to collectively as "the church", except where the context otherwise requires. The receiver is to carry out the

duties which are specified in this order: Bond is fixed in the sum of $10,000 for the receiver.

4. The receiver is to take possession and control of the church, including all of its assets, both real and personal, tangible and intangible, of every kind and description, except as is otherwise provided by the court at this time.

5. In spite of this order of possession, it is further ordered that all of the authorized employees of the church shall be permitted to continue to carry out their duties and to continue all activities and operations of the church. The receiver nevertheless has the right and power to supervise and monitor all of the business and financial operations and activities of the church, but he shall not interfere unless he determines, in the sound exercise of his sole discretion that such interference is necessary to avoid damage or loss to the church of any kind.

If he does so determine, then he shall have the right to take over management and control of the church to whatever extent that he, in the sound exercise of his sole discretion deems necessary.

The receiver is empowered to hire and employ and retain lawyers, accountants, appraisers, business consultants, computer experts, security guards, secretarial and clerical help, and employees of all sorts to assist him in the discharge of his duties pursuant to this order. He is authorized to pay reasonable compensation to all of his assistants out of the funds and assets of the church, subject to the supervision of this court as will be provided herein.

The receiver is to take immediate possession of all books and records of the church, no matter where

or in whose possession said records may be found. These records are to include, without limitation, journals, ledgers, bank statements, vouchers, invoices, logs, memoranda, and computer-readable data.

These books and records shall be made available for the use of the employees of the church in the carrying out of all their duties. They shall also be made available to the representatives of the plaintiffs in this action for use in preparing for the trial in this action.

The receiver is to supervise and control all the business and financial operations of the church, including both ordinary day-to-day operations, and extraordinary operations. While it is ordered that the receiver shall not interfere with the normal business and financial operations of the church unless he deems it, in the sound exercise of his sole discretion, to be necessary so to interfere. To the extent he determines it necessary, the receiver has the right to take over any portion of the operation of the business and financial affairs of the church that he deems necessary in order to protect the church and its assets or to carry out his duties as receiver.

Except as otherwise provided herein with respect to Messrs. Herbert W. Armstrong and Stanley Rader, the receiver is hereby authorized to suspend or terminate, as he in the sound exercise of his sole discretion determines is necessary, any employee, officer, or agent of the church, subject to any contractual employment rights the suspended or terminated party may have, and to direct that said employee, officer or agent not be permitted access to any of the grounds or facilities of the church from and after the date of such termination or suspension.

Messrs. Armstrong and Rader will be permitted to continue their prior functions as representatives and authorities of the church unless and until they or either of them are removed by proper action of the church pursuant to its by-laws and articles; or unless they are removed by further order of this court pursuant to application on the part of the receiver. If the receiver deems it necessary at any time hereafter pending the trial to move the court to remove either Mr. Armstrong or Mr. Rader or both, the receiver shall file a petition with the court on notice to the defendants. The court will hear the matters and make a determination on that issue. However, subject to their rights under the existing employment contracts which Messrs. Armstrong and Rader have, to the extent that those rights may hereafter be determined by the court, their compensation for services and their reimbursement for any expenses they may incur in the course of their employment by the church, shall only be in such amounts as may be determined by the receiver in his discretion from time to time.

It is not the purpose or intention of this order to allow the receiver to interfere in any way with the ecclesiastical functions of the church, as distinguished from the college or the foundation, and the receiver shall not do so. This receivership will concern itself exclusively with the financial and business affairs of the church. The ecclesiastical affairs of the church shall be continued to be controlled and directed by its duly authorized ecclesiastical authorities. Notwithstanding the authority of the receiver to terminate or suspend persons from employment pursuant to this order, such termination or suspension shall in no way affect their membership or standing in the church.

In the event of any dispute between the receiver and the ecclesiastical authorities of the church, as opposed to the college or the foundation, over whether or not a particular matter is ecclesiastical, the plaintiff or defendants may apply to this court for a resolution of that dispute.

It shall not be necessary for the receiver initially to take possession of, nor to deposit in any special receiver's account, the funds of the church now or hereafter received by the church; but the receiver shall supervise the deposits and disbursements of the funds by the church in accordance with the terms of this order. The funds of the church shall continue to be handled by its employees in the same manner and by the same bookkeeping, accounting and disbursing procedures as were in effect at the time of the commencement of this action, subject to the supervision of the receiver. But in any event, the receiver shall have the right, in the sound exercise of his sole discretion and at any time, to take possession and control of the funds of the church or any portion thereof required to carry out his duties. He shall take such possession if he deems it necessary forthwith on notification to the court and to the defendants and to deposit them for his use in the special receiver's account.

As soon as reasonably practicable, the receiver shall present a petition to this court outlining the nature and extent of expenditures he has expended or which he anticipates will be necessary for the discharge of those of his duties which are peculiar to this receivership, and he shall seek approval or ratification of this court to incur and pay such expenditures. Pending the presentation and determination of said petition, the receiver is authorized to incur and pay such expenses

as in his discretion are necessary or expedient to the immediate discharge of his duties.

The receiver shall not be required to seek advance approval of this court for expenditures associated with the day-to-day operations of the church.

6. No risk or obligation incurred by the receiver shall be the personal risk or obligation of said receiver but shall be the risk or obligation of the receivership estate, unless the Court shall determine hereafter that it would be appropriate to order otherwise.

Until a final disposition of this matter is made, the defendants and each of them, and their agents, employees, or all persons acting in concert with them, are hereby enjoined and restrained from interfering with or obstructing the receiver in the discharge of his duties, or from withholding from him any of the funds, assets, properties, books, or records of the church.

Bond to stay the appointment of the receiver is fixed at $1 million. This may be paid from church assets without prejudice to the right of the court to assess the cost at a later time against any individual defendants as may be appropriate.

Dated: Mar. 16, 1979.

JULIUS M. TITLE
Judge of the Superior Court.

IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1720

WORLDWIDE CHURCH OF GOD, INC., *et al.*,
Petitioners,

vs.

THE STATE OF CALIFORNIA,
Respondent.

Supplemental Brief to Petition for Writ of Certiorari.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Cases

Rules

Statute

IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1720

WORLDWIDE CHURCH OF GOD, INC., *et al.*,
Petitioners,

vs.

THE STATE OF CALIFORNIA,
Respondent.

Supplemental Brief
to Petition for Writ of Certiorari.

Pursuant to Rule 24, Subdivision 5, of this Court's Rules, Petitioners respectfully submit this Supplemental Brief to call the Court's attention to the following matters not available at the time of their last filing:

1. *Surinach v. Pesquera de Busquets,* ..... F.2d ....., First Circuit Number 78-1527, filed July 25, 1979 (a copy of which is attached hereto as Appendix A), is an exact parallel to the instant proceeding. *Surinach* holds that even inquiry into supposedly "neutral" financial affairs of a church-operated school by a governmental agency offends the Religion Clauses of the First Amendment. This case squarely supports Petitioners' contention that the inquiry by the State of California into the affairs of the Worldwide Church of God transgresses the Church's First Amendment

rights. Indeed, the case endorses each of the arguments Petitioners have made, and rejects each of those advanced by the State, point by point.

Further, *Surinach* specifically underscores the continuing and irreparable First Amendment harm inflicted on the Church by the State's on-going efforts to thrust itself into religious affairs and force disclosure of information concerning Church affairs.

2. On August 7, 1979, one of the Petitioners herein filed a companion Petition for Writ of Certiorari entitled *Stanley R. Rader v. The State of California,* No. 79-205. This companion petition arises out of the State's vigorous and relentless efforts to achieve its unconstitutional objectives in the lawsuit through inquisition of Church officers and forced disclosure of Church affairs. Each of the major Church officers named as a Defendant has been ordered by the Los Angeles Superior Court to appear for deposition and to produce documents pertaining to Church affairs. The Attorney General, aided by a steady flow of court orders based on the stated premise that this is not a First Amendment case, is rushing ahead in daily violation of Petitioners' First Amendment rights.[1] Petitioners continue to resist, but with each new court ruling First Amendment freedoms and the Church's remaining rights diminish.

[1]For example, the trial court has recently granted the California Attorney General access to, *inter alia:* (1) all minutes of governing boards' meetings for the Church, College and Foundation from January, 1957, to the present; (2) detailed information on income and expenditures of the Church, College and Foundation for more than the last twenty years; (3) an internal report on Church membership and circulation of a certain Church publication from 1955 to 1978.

Petitioners have also been ordered to answer interrogatories covering essentially the same material.

Respectfully submitted,

ALLAN BROWNE
of
ERVIN, COHEN & JESSUP

WM. MARSHALL MORGAN
of
MORGAN, WENZEL & MCNICHOLAS

DAVID M. HARNEY
of
HARNEY & MOORE

ELLIS J. HORVITZ
MARC J. POSTER and
ALAN G. MARTIN
of
HORVITZ, GREINES & POSTER
A Law Corporation

Counsel for Petitioners

APPENDIX A.

Opinion of the United States Court of Appeals for the First Circuit.

United States Court of Appeals for the First Circuit.

His Excellency Bishop Ricardo Surinach etc., et al., Plaintiffs, Appellants, v. Carmen T. Pesquera De Busquets, Defendant, Appellee. No. 78-1527.

Appeal from the United States District Court for the District of Puerto Rico [Hon. Juan R. Torruella, *U.S. District Judge*].

Before Coffin, *Chief Judge*, Campbell and Bownes, *Circuit Judges*.

Jose Guillermo Vivas, with whom *Carlos Martinez-Texidor*, and *Vivas & Martinez-Texidor*, were on brief for appellants.

Reina Colon De Rodriguez, Assistant Solicitor General, with whom *Hector A. Colon Cruz*, Solicitor General, was on brief for appellee.

George E. Reed, General Counsel, and *Patrick F. Geary*, Assistant General Counsel, on brief for United States Catholic Conference, amicus curiae.

July 25, 1979

Coffin, *Chief Judge*. This litigation was instituted by the President of the Inter-Diocesan Secretariat for Catholic Education of Puerto Rico and superintendents of Roman Catholic schools in a number of Puerto Rican dioceses to have declared unconstitutional actions taken by the Secretary of Consumer Affairs of Puerto Rico to investigate the operating costs of Roman Catholic schools in the Commonwealth. Plaintiffs also sought to have the Secretary permanently enjoined from "interfering, meddling, or entangling with or in the financial affairs of the Roman Catholic Apostolic Church."

In April of 1973 the Commonwealth of Puerto Rico established a Department of Consumer Affairs "to defend and implement the rights of the consumer, to restrain inflationary trends; as well as the establishment and inspection of a price control over the goods and services for use and consumption." Law Number 5 of April 23, 1973, as amended, Article 3, §341b. The powers accorded the Secretary of the Department for the fulfillment of his duties are wide ranging; he may issue subpoenas to compel the appearance of witnesses and the production of documents and information, Article 6(h), inspect records, documents and physical facilities of entities subject to his regulation, Article 6(w), and resort to the courts to ensure compliance with his directives, Article 6(i). His scope of inquiry is equally untrammeled, for "[t]he Department is . . . empowered to carry out all kinds of studies and investigations on matters affecting the consumer, and to such purposes the Secretary may require the information which might be necessary, pertinent and essential to achieve such purposes." Article 14(a), (b), (c).

Pursuant to this mandate, the Department launched an investigation of the costs of private schools operating in Puerto Rico, an investigation which encompassed parochial schools under the aegis of the Roman Catholic Church. In July of 1978, plaintiffs were ordered by the Secretary to provide within ten days specified documents and books and to furnish such information as the school's annual budgets for the three previous years; the source of their finances (registrations, donations, governmental and others); costs of transportation; the student cost per academic grade for registration, admission dues, activities, medical insurance, nourishment services, materials and school uniforms; the salaries

paid to teachers, administrative, maintenance and other personnel; book costs and invoices per grade and their resale prices as well as the names and addresses of book suppliers; and scholarships and the criteria upon which they were awarded. The plaintiffs refused compliance with the order and brought the instant suit, alleging that the Secretary's actions were in violation of the Religion Clauses of the First Amendment and constituted an impermissible entanglement of the affairs of church and state.

On the motion of the defendant, the district court dismissed the complaint.[1] The court recognized that it was faced with the " 'sensitive and delicate task' of balancing governmental dictates of social policy against a religious claim for exemption from requirements of general applicability", but concluded that "the general investigation to which [the Catholic schools] are being subject does not penalize, hinder or otherwise curtail any religious practice of Plaintiffs." It further found that the amount of entanglement which this administrative scheme would engender, at least in the preliminary information gathering stages of the investigation, fell short of a constitutional transgression.[2] Because we find

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[1]Although the district court's mandate merely states that the complaint is dismissed, it is clear that it reached and fully adjudicated the merits of this dispute. The defendants had moved to dismiss or for summary judgment, and the court expressly stated that "[n]o factual disputes are extant, and the matter is now ripe for disposition." The merits of the case and not merely the sufficiency of the complaint thus are properly before us for resolution.

[2]Subsequent to the district court's decision in this case, it had occasion to review another challenge to the Department of Consumer Affairs' request for documents and information pursuant to its investigation of the costs of private education in Puerto Rico. That suit was brought by eighteen private, nonsectarian schools in Puerto Rico and their professional

(This footnote is continued on next page)

that the First Amendment indeed is encroached upon by the Commonwealth's efforts to obtain the above information from the schools and that the Commonwealth has failed to shoulder its substantial burden of justifying that encroachment, we reverse the judgment below.

Our analysis of the issues presented by this case parts company with that of the district court from the outset. The court below placed great emphasis on the "preliminary nature of the administrative action challenged in this case":

> "The record in this case is devoid of any substantial indicia of a realizable regulation of the internal financial affairs of the Catholic Schools. Furthermore, the Defendant has not palpably limited the tuition costs of the schools. We therefore are in no position to decide the validity of an actual governmental regulation in these areas. We simply hold that the *status quo* fails to support a cause of action under the religious clauses of the First Amendment."

While it is true that the constitutionality of the entire regulatory scheme as applied to Catholic schools

organization and alleged that the investigation constituted an unconstitutional deprivation of their right to conduct their affairs and the liberty of parents to select and direct the education of their children. Taking an approach similar to that followed in the instant case, the court held that there was no concrete controversy concerning the possibility of actual cost regulation and that no privacy rights were infringed by the compelled disclosure. *Colegio Puertorriqueno de Ninas, etc. v. Carmen T. Pesquera de Busquets*, No. 78-2103 (D. P.R. Feb. 6, 1979).

We wish to make clear that the validity of the Department's investigation into the costs of private education as applied to nonsectarian schools is not before us, and we express no opinion in that regard.

is not squarely before us, the court's bifurcation of the gathering of the information and the purpose for which it is sought strikes us as both artificial and constitutionally unsound. The Department of Consumer Affairs is empowered to "restrain inflationary trends" by "establish[ing]" and "inspect[ing]" a system of price control for goods and services in the Puerto Rican economy. And as counsel for the Secretary made clear at oral argument, the information in this case is sought pursuant to that broad directive. The gathering of information is not viewed as an end in itself. To the contrary, it is merely a first step by the Department; the records and information furnished by the schools will be examined and may be made public; both public hearings and the enactment of regulations may then take place, and if the Department ultimately determines that the costs of Catholic schools must be contained, ceilings can and will be imposed.[3] At least in this

[3]Appellee relies on several Supreme Court cases which, it is argued, stand for the proposition that requiring information about an activity can in no sense be considered regulation of that activity, and from there concludes that requests for information always must be viewed in isolation from the purpose to which that information may be put. That reliance and the conclusion drawn therefrom is misplaced. In *United States v. Five Gambling Devices*, 346 U.S. 441 (1953), the Court stated that "here there is no attempt to regulate [local activities]; all that is required is information in aid of enforcement of *the conceded power* to ban interstate transportation." (Emphasis added.) And in *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U.S. 194, 211 (1912), the Court found that:

> "The object of requiring [business] accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations *subject to the act that it may properly regulate such matters as are really within its jurisdiction.*" (Emphasis added.)

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case we are dealing with the gathering of information in a context where we cannot conceive—nor have we been apprised—of any rational end product use of this information which will not encroach on appellants' First Amendment rights.

It is not the obligation of the schools to prove as a precondition for relief at this time that this precise scenario, which hardly can be called speculative, in fact will unfold.[4] To the contrary, in the sensitive area of First Amendment religious freedoms, the burden is upon the state to show that implementation of a regulatory scheme will *not* ultimately infringe upon and entangle it in the affairs of a religion to an extent which the Constitution will not countenance. In cases of this nature, a court will often be called upon to act in a predictive posture; it may not step aside and await a course of events which promises to raise serious constitutional problems. In *Catholic Bishop of Chicago v. NLRB*, 559 F.2d 1112 (7th Cir. 1977), *aff'd on statutory grounds*, 47 U.S.L.W. 4283 (No. 77-752 March 21, 1979), the court of appeals held that the exercise of jurisdiction by the NLRB over schools operated by the Roman Catholic

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Thus, in these cases, the information was sought pursuant to a regulatory power, the validity of which was not in dispute. The Court did not divorce the gathering of information from the regulatory purpose for which it was sought. To the contrary, while the distinction was recognized, the former was analyzed in terms of the latter. *Cf. Marchetti v. United States*, 390 U.S. 39, 47 (1968) ("Information obtained as a consequence of the federal wagering tax laws is readily available to assist the efforts of state and federal authorities to enforce these penalties.")

[4]We merely note appellees' description of the costs in private schools as an "inflationary spiral", as at least suggesting what is the current perception of the Department—that the rate at which those costs are rising must be contained.

Church violated the separation between church and state.[5] Reasoning from the cases which have found various forms of aid to sectarian schools to be unconstitutional, it expressly rejected the Board's contention that any constitutional problems should be litigated "down the line" if and when disputes arose between the Board and schools subject to its jurisdiction:

> "The whole tenor of the Religion Clause cases involving state aid to schools is that there does not have to be an actual trial run to determine whether the aid can be segregated, received and retained as to secular activities only, but it is sufficient to strike the aid down that a reasonable likelihood or possibility of entanglement exists." 559 F.2d at 1126.

See Lemon v. Kurtzman, 403 U.S. 602, 621 (1971) ("The government cash grants before us now provide no basis for predicting that comprehensive measures of surveillance and controls will not follow."); *Walz v. Tax Commission*, 397 U.S. 667, 674 (1970) ("Elimination of the exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes.") Accordingly

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[5]The Supreme Court concluded that "Congress did not contemplate that the Board would require church-operated schools to grant recognition to unions as bargaining agents for their teachers", *NLRB v. The Catholic Bishop of Chicago et al.*, 47 U.S.L.W. 4283, 4288 (No. 77-752 March 21, 1979), and therefore did not rule on the constitutionality of the exercise of the Board's jurisdiction. It did however refer to what it called "difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses" and state that "the record affords abundant evidence that the Board's exercise of jurisdiction over teachers in church-operated schools would implicate the guarantees of the Religion Clauses." *Id.*

we believe that the constitutional perils of the compelled disclosure of cost information must be assessed and the Commonwealth's interest in that disclosure justified in view of the purpose for which the information was solicited.

The schools in question are an integral part of the Catholic Church and as such "involve substantial religious activity and purpose." *Lemon v. Kurtzman, supra,* 403 U.S. at 616. Cognizant of the fact that the course of neutrality charted by the Constitution toward religion cannot follow "an absolutely straight line", *Walz v. Tax Commission, supra,* 397 U.S. at 669; *see Lemon v. Kurtzman, supra,* 403 U.S. at 614; *Zorach v. Clauson,* 343 U.S. 306, 312-13 (1952), our task here is to determine whether the "particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so." *Walz v. Tax Commission, supra,* 397 U.S. at 669; *see Sherbert v. Verner,* 374 U.S. 398, 404 (1963), *citing Braunfeld v. Brown,* 366 U.S. 599, 607 (1961). The court below concluded that because the Secretary's investigation was directed at *all* private schools in Puerto Rico rather than merely those of the Roman Catholic Church and because the information solicited did not probe into doctrinal matters, there had been no showing that either the purpose or the effect of the Commonwealth's actions was to burden the free exercise of religion. While we agree that there has been no showing of any purpose to inhibit religion, the effect of the Commonwealth's actions, even though aimed at private schools in general, constitutes a palpable threat of state interference with the internal policies and beliefs of these church related schools. *See Serbian Eastern Orthodox Diocese for*

the United States of America and Canada v. Milivojevich, 426 U.S. 696, 713 (1976). As the Supreme Court repeatedly has recognized, "[a] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Wisconsin v. Yoder,* 406 U.S. 205, 220 (1972).

The Canon Law of the Roman Catholic Church pertaining to Catholic Schools states that the Bishops, in fulfillment of their duty to ensure that Catholic children attend Catholic schools, must see that "their own schools [are] not inferior to public ones; therefore it follows, that maximum diligence should be devoted to establish them where there are none and improve them where they are below the public schools' standards." 57 Concern of the Bishops (Canon 1379-1380). The Episcopal Conference of Puerto Rico, in its Pastoral Letter: Education in Catholic Schools in Puerto Rico, further emphasizes that "[t]here are two characteristics of the Catholic school that should always prevail: academic excellency and genuine Catholicism." These goals must be pursued vigorously:

> "In a constantly changing and competitive world, the alumni of our Catholic schools will not only need a basic general culture, but also an academic formation well rooted, starting with the lower grades. Therefore, our Directors and Principals should have, not only an exceptionally qualified teaching personnel, but whenever possible, all the equipment and methods that the new techniques and the modern psychological and educational sciences offer.
>
> "We owe this academic excellency to all the parents of our students and to the students them-

selves, in the degree that each school is capable of offering."

We think it clear that the eventual use to which the school's cost information could be put could interfere seriously with these religious duties and objectives. The Department, sifting through the details of the schools' budgets and holding its hearings, may conclude that costs are rising too fast and must be contained to a specified level. While such a determination might be consistent with the Department's mandate, it surely could clash with what is a religious belief and practice of those who administer these schools, namely that the highest quality education possible must be provided to their students. We do not suggest that quality of education and the expenditure of money invariably are linked, but it would be unrealistic to assume that the curricula and facilities of these schools would not be curtailed and hence religious objectives affected if they were forced to contain their costs. *Cf. Buckley v. Valeo,* 424 U.S. 1, 19 (1976) ("A restriction on the amount of money a person or group can spend on political communication during the campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.").

Moreover, it seems likely that as the regulatory process unfolds, some determination of which costs are "necessary" and "reasonable" in the running of a private school would have to be made. For example, the Department perhaps could determine that the ratio of teachers to students in these schools is unusually low, and that the rising costs of education could be stemmed by adjusting that ratio. The Bishop and superintendents of these schools, on the other hand, may have decided that small classes of students are vitally important if there is to be the sustained and intensely personal contact between a pupil and his religious mentor that they deem necessary to the mission of the Catholic Church and its schools. *See Lemon v. Kurtzman, supra,* 403 U.S. at 618. In short, the value judgments and sense of priorities of the regulator and regulatee are likely to be grounded in wholly different concerns. And whether the schools were to be ordered specifically to increase the teacher-student ratio as a means of cost containment, or whether that factor merely would figure in the Department's conclusion and order that costs in general must be contained, a wholly secular objective would be furthered at the expense of one which is religious. We find it scant comfort that no such judgments have yet been brought to bear by the Department, or that the Department might ultimately conclude that the costs of these schools need not be contained by government controls. The appellants' ability to make decisions concerning the recruitment, allocation and expenditure of their funds is intimately bound up in their mission of religious education and thus is protected by the free exercise clause of the First Amendment. The Department's attempt to take its first steps down its regulatory road by gathering information accordingly are suspect, both in light of the purpose for which the information is sought and in itself, for as has long been recognized, "compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights." *Buckley v. Valeo, supra,* 424 U.S. at 66. We see that potential in the chilling of the decision making process, occasioned by the threat that those decisions will become the subject of public hearings and that

eventually, if found wanting, will be supplanted by governmental control. *See Catholic Bishop of Chicago v. NLRB, supra,* 559 F.2d at 1124. And even if that governmental control should not come to pass, disclosure of the schools' finances—from amounts of donations to details of expenditures—could provide private groups or the press with the tools for accomplishing much the same ends.

Furthermore, the Secretary's power to "regulate, fix, control, freeze and review", § 341e(a), the schools' prices is "a continuing [involvement] calling for official and continuing surveillance leading to an impermissible degree of entanglement." *Walz v. Tax Commission, supra,* 397 U.S. at 675. Such an entanglement between the affairs of church and state is "an independent evil against which the Religion Clauses were intended to protect." *Lemon v. Kurtzman, supra,* 403 U.S. at 624-25. The subpoenas which generated this controversy sought extremely detailed information about the expenditure of funds of these Catholic schools. If the schools are forced to comply, that information will be subjected to governmental perusal, to public examination, and ultimately may form the basis for significant governmental involvement in their fiscal management. Even if we were able to countenance the degree of entanglement occasioned by the government's involvement in these details of fiscal administration, we could not feel confident that an end to that involvement was in sight. To the contrary, with ceilings in place, the Commonwealth would have the ongoing powers necessary to ensure compliance with its orders and regulations, from compelling the keeping of records and the providing of testimony to the continuing inspection of papers and physical facilities. Sections 341e(u),(w). This governmental program thus has the "self-perpetuating and self-expanding propensities" which have alerted courts to an increased danger of an unconstitutional degree of entanglement. *See Lemon v. Kurtzman, supra,* 403 U.S. at 624.

It is true, as the district court emphasized, that the Supreme Court has been especially sensitive to an entanglement which requires the state to distinguish between and thus determine what is religious and what is secular. For example, in *Lemon v. Kurtzman, supra,* the Court struck down two systems of state aid to parochial schools, on Establishment Clause and entanglement grounds:

> "[T]he program requires the government to examine the school's records in order to determine how much of the total expenditures is attributable to secular education and how much to religious activity. This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids." 403 U.S. at 620.

Unlike the programs in *Lemon*, this regulatory scheme does not call upon the state to identify certain expenses as religious or secular. It does, however, permit it to intrude upon decisions of religious authorities as to how much money should be expended and how funds should best be allotted to serve the religious goals of the schools. Either form of involvement strikes us as "a relationship pregnant with dangers of excessive government direction of church schools and hence of churches." *Id.*

Given our conclusion that the Secretary's demands for the financial data of these schools both burden

the free exercise of religion and pose a threat of entanglement between the affairs of church and state, the Commonwealth must show that "some compelling state interest" justifies that burden, *Sherbert v. Verner, supra,* 374 U.S. at 406; *see Wisconsin v. Yoder, supra,* 406 U.S. at 220-21 (1972), and that there exists no less restrictive or entangling alternative. *See Sherbert v. Verner, supra,* 374 F.2d at 407; *Walz v. Tax Commission, supra,* 397 U.S. at 674-75; L. Tribe, *American Constitutional Law* 851-55 (1978). This demanding level of scrutiny also is required here because of the vehicle of regulation chosen by the Department—compelled disclosure which implicates First Amendment rights. *See generally Watkins v. United States,* 354 U.S. 178, 197-200 (1957); *O'Brien v. DiGrazia,* 544 F.2d 543, 546 (1st Cir. 1976).

In *Buckley v. Valeo,* 424 U.S. 1 (1974), the Supreme Court considered a variety of constitutional challenges to the Federal Election Campaign Act of 1971, as amended in 1974. Ruling on an overbreadth challenge to the Act's requirement that every political committee and candidate file detailed financial reports concerning the source and amount of contributions they had received, the Court emphasized that it has "repeatedly found that compelled disclosure, in itself, can seriously impinge upon privacy of association and belief guaranteed by the First Amendment", 424 U.S. at 64, and described the government's burden in justifying the disclosure as follows:

> "We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny. We also have insisted that there be a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed. . . . This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure. . . ." *Id.* at 64-65 (citations omitted).

While the *Buckley* Court concluded that the vital governmental interest in the "free functioning of our national institutions" outweighed the possibility of infringement of First Amendment freedoms, *id.* at 66-67, we find that the interests served by the compelled disclosure in this case are far less weighty.[6]

The Department seeks the information in question so that it may launch an investigation of the "inflationary spiral . . . reflected in the costs of private education in the Commonwealth". With this general purpose we need have no quarrel. However, it has made no effort in this appeal to argue that its interests in refusing to exclude these schools from that investigation are of sufficient magnitude to justify an infringement of their First Amendment freedoms. *See Sherbert v. Verner, supra,* 374 U.S. at 406-09; *Braunfeld v.*

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[6]We rely on *Buckley v. Valeo,* 424 U.S. 1 (1974), for the broad proposition that compelled disclosure implicating First Amendment freedoms must survive an exacting level of judicial scrutiny. We do not mean to imply that the First Amendment freedoms at issue in *Buckley* and in the instant case are identical. Whereas the First Amendment interest recognized in *Buckley* was freedom of association, we rest our decision here solely on the free exercise clause.

Brown, supra, 403 U.S. at 608-09; Tribe, *supra,* at 855. Relying merely on the "legitimacy" and secular nature of its general objectives, the Department does not claim that it would be unable to fulfill its wide ranging duties if one portion of one segment of the economy were to be excluded from its investigation and subsequent regulation, and we cannot so assume. It does not even claim, nor could it, in our opinion, that the general interests which the Department serves rise to the level of those which have been found to outweigh First Amendment religious freedoms. *See, e.g., Gillette v. United States,* 401 U.S. 437, 462 (1971) ("procuring the manpower necessary for military purposes pursuant to the . . . grant of Congress to raise and support armies" justifies denial of conscientious objector status when objection is to "unjust wars"); *Prince v. Massachusetts,* 321 U.S. 158, 168-69 (1944) (state's interest in protecting children from physical harm and exploitation as street proselytizers overrides religious dictates); *Jehovah's Witnesses v. King County Hospital,* 390 U.S. 598 (1968) (per curiam), *aff'g,* 278 F. Supp. 488 (W.D. Wash. 1967) (three judge court) (state may override religiously motivated decision of parents to withhold blood transfusion necessary to save child's life). This is not a case in which the records of a religious organization are subpoenaed pursuant to a criminal investigation, a situation in which the state's interest unquestionably is strong. *In re Rabbinical Seminary,* 450 F. Supp. 1078 (E.D.N.Y. 1978); *see Cantwell v. Connecticut,* 310 U.S. 296, 306 (1940); *Securities & Exchange Commission v. World Radio Mission, Inc.,* 544 F.2d 535 (1st Cir. 1976).

Finally, the Department has failed to show that it has pursued its secular objectives in the manner which

is least intrusive upon religious concerns. *Walz v. Tax Commission, supra,* 397 U.S. at 674. The Department has not satisfied that burden merely by noting that the investigation does not single out religious private schools. It is well established that state action, although neutral on its face, can in practice occasion a substantial infringement on First Amendment freedoms. *See Wisconsin v. Yoder, supra,* 406 U.S. at 220-21; *Walz v. Tax Commission, supra,* 397 U.S. at 675-76; *Sherbert v. Verner, supra,* 374 U.S. at 409.

Accordingly, the judgment below is reversed. Appellants seek injunctive relief which would forbid appellee "from interfering, meddling or entangling with the financial affairs of the Roman Catholic Church." Relief of such breadth is unjustified in the context of the dispute before us. The case is remanded so that the district court may enter an order declaring unconstitutional the challenged orders of the Department compelling production of documents and information from plaintiffs-appellants and permanently enjoining the Department from enforcing such orders.

So ordered.

IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1720

WORLDWIDE CHURCH OF GOD, INC., *et al.*,

Petitioners,

vs.

THE STATE OF CALIFORNIA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Rules

Statutes

Textbooks

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Statement of the Case

This is an action the purpose of which is to protect the assets of three California nonprofit charitable corporations, one of which is a church, from fraudulent misappropriation for the private benefit of persons in control thereof. The action seeks to compel an accounting from defendants for their misappropriation of charitable assets, and any further equitable relief shown to be warranted by the accounting. It was brought by the Attorney General of the State of California as the only party other than the accused wrongdoers having the legal standing under California law to do so. (See *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750.)

Originally participating as plaintiffs with the Attorney General were six concerned Church members

whom the Attorney General gave permission to participate therein as "relators" (to file suit on the relation of the People of the State of California). The relators subsequently withdrew from the case and plaintiff the People of the State of California filed a First Amended Complaint[1] alleging in substance as follows:

1. Defendant Worldwide Church of God, Inc. is a California nonprofit corporation organized exclusively for charitable and religious purposes; all of its assets are dedicated irrevocably to such purposes as set forth in its articles of incorporation. Defendant Ambassador College, Inc., likewise a California nonprofit corporation, was organized exclusively for educational purposes and all of its assets are dedicated irrevocably to those purposes as set forth in its articles of incorporation. Finally, defendant Ambassador International Cultural Foundation, Inc. is also a California nonprofit corporation organized exclusively for charitable purposes, and all of its assets are dedicated irrevocably to such purposes as set forth in its articles of incorporation. All three corporations are exempt from taxation as charitable entities. (The three charitable corporations will hereafter sometimes be referred to as the Church, College, and Foundation, respectively.)

2. The Church, College and Foundation as well as the individual named defendants as officers and directors thereof, hold and are responsible for the assets of the three charitable corporations as trustees subject to supervision by the Attorney General and the California courts.

3. The Church, College, Foundation and individual named defendants are required by law to account to

[1]A copy of the First Amended Complaint appears as Appendix A hereto.

the court for all assets received, expended or held by the charitable corporations.

4. An accounting is needed from the charitable corporations and individual defendants because the individual defendants have been and are siphoning off and diverting to their own use and benefit assets of the Church, College and Foundation on a massive scale.

5. The Church, College and Foundation are under the primary control of the individual defendants who are themselves accused of diverting the assets of the charitable corporations to their own benefit.

6. The appointment by the court of a receiver pendente lite of the charitable corporations is necessary in order to prevent continuing misappropriation of funds, massive liquidation of assets and destruction and/or removal of the records of the individual defendants' wrongdoing.

The order of March 12th appointing a receiver pendente lite[2] was based upon the evidentiary hearing in the trial court on January 10th, 11th and 12th, 1979.[3] There is no question that the evidence received and considered by the trial court at that time was amply substantial to sustain the findings and conclusions. Petitioners had ample opportunity upon notice to present testimony, declarations and argument to

[2]Appendix G to the Petition for Certiorari includes the minute order of March 12 and formal written order dated March 16.

[3]A receiver was first appointed *ex parte* on January 2, 1979. The appointment was confirmed by order dated January 19, 1979. The appointment was confirmed by order dated January 19, after the hearing of January 10-12. The receivership was then dissolved by order dated March 2, but reimposed on March 12.

the court, as well as to cross-examine witnesses presented by the State. The transcript of that hearing is 413 pages in length.

At the January 10-12 hearing, defendant Stanley Rader testified (Rptr. Tr. 141-171)[4] to numerous self-dealing transactions between himself and the Church during the long period of time when he served as its general counsel, executive director and/or chief advisor to Herbert W. Armstrong, the pastor general of the Church. Among other things, Rader admitted that he holds title to a house in Tucson, Arizona which has been bought and paid for with Church funds; that he had taken title to a house in Beverly Hills which was bought and later maintained to a large extent with Church funds, and which he sold in 1978 for $1.8 million, pocketing the proceeds; that he had organized an advertising agency to handle the Church's media time purchases for commission; that an accounting firm that he had organized (defendant Rader, Cornwall, Kessler and Palazzo) did the accounting work for the Church; that the law firm with which he was associated (Rader, Helge and Gerson) did the Church's legal work; and that he had organized a company which purchased aircraft and then leased them to the Church at a profit.

There was also substantial evidence from which the trial court could conclude that records had been removed from church premises after the initial appointment of the receiver, and in violation of court order. Despite his emphatiac denials, there was substantial evidence that John Kineston (Rader's chauffeur and

[4]Portions of the transcript of the January 10-12 hearing appear in Appendix B hereto.

administrative assistant) had removed Church records from Church premises after the receiver was appointed, and that he had entered the Church's data processing building during the night time, although it was supposed to be locked and secured under direction of the receiver in order to safeguard the Church's records. (Tr. pp. 229-235; testimony of Roberson and Morgan, Tr. pp. 235-250 and 258-260.)

Likewise, although Virginia Kineston (Rader's executive secretary) had filed a declaration denying that shredding of Church records had ever taken place (Tr. p. 222), substantial evidence was produced to show that such shredding had in fact taken place, and Mrs. Kineston herself ultimately admitted it. (Tr. pp. 216-228; 262-266.)

The trial court may also have become skeptical about the veracity and good faith of the petitioners when it became apparent that three different versions of the bylaws of the Church, varying from one another on crucial points, were apparently in existence at the same time (Tr. pp. 366-368).

The trial court confirmed the original appointment of a receiver pendente lite in a written order dated January 19, 1979. (Appendix E to the Petition.) The court ordered that the receiver was to supervise and monitor only the business and financial operations of the Church and conduct an audit thereof. He was ordered not to interfere even with those business and financial operations except to the extent he believed it necessary to protect assets from continuing misappropriation. Thus the court ordered a very limited receivership, carefully tailored to accomplish the narrow purposes of securing a financial audit, safeguarding

financial records and preventing any continuing misappropriation of funds. In that order, the receiver was further instructed not to interfere with the ecclesiastical functions of the Church. The receiver was given the right to fire employees of the Church but not to affect the standing or membership of any such employees in the Church. So the trial court assiduously sought to avoid interference in matters of religious doctrine and practice. (Appendix E to the Petition, p. 30.)

Upon motion of the petitioners themselves to dissolve the temporary receivership imposed by the January 19th order, the trial court on March 2, 1979 dissolved the receivership and substituted an injunctive order. That motion asserted that the objectives of the receivership (to secure an accounting and safeguard church assets) could be achieved through injunctive orders "with which defendants assured the court they would comply." (Order Dissolving Receivership dated March 2, 1979, attached to petitioners' Application for Stay in this Court as Exhibit F.) Accordingly, the trial court ordered defendants to give the Attorney General access to the financial records of the Church, College and Foundation for the purpose of obtaining an accounting. (See Petition, p. 9.) The court reserved jurisdiction to reinstate the receivership if that proved necessary to protect charitable assets and secure a proper accounting from the defendants. (Exhibit F to Application for Stay, p. 3.)

Such reservation of jurisdiction to reinstitute the receivership indeed proved to be necessary when the defendants repudiated their assurances of cooperation with the injunctive order, filed an appeal from that order, and asserted that all mandatory aspects of the injunctive order were stayed pursuant to California

law pending appeal. The court on its own motion thereupon reinstituted the receivership by the minute order of March 12, 1979, asserting that "the status quo of the assets and records must be maintained pending appeal." (Appendix G to the Petition, p. 39.) However, the order further provided that reinstatement of the receivership would be stayed if defendants posted a $1 million appeal bond. Defendants have posted such a bond.

The order of March 12 reinstating the receivership is reviewable by direct appeal. (Cal. Code Civil Proc., § 904.1(g).) That order is now stayed under its own terms by reason of defendants posting a $1 million appeal bond in the form of nearly 900 individual undertakings. Plaintiff has decided not to challenge those undertakings.[5] Therefore, the receivership will remain stayed until petitioners' appeal is finally decided by the California courts.

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[5]On May 25, 1979, plaintiff withdrew exceptions, previously filed, to the undertakings. A copy of such "Withdrawal" appears herein as Appendix D.

ARGUMENT

I

The Federal Constitutional Questions Are Not Properly Before This Court

A. The Federal Issues Are Not Ripe for Review.

The United States Code provides for review by the Supreme Court, whether by appeal or by certiorari, only of "final judgments or decrees rendered by the highest court of a State in which a decision could be had" on specified federal questions. (28 U.S.C. § 1257.)

The requirement of finality is not just a technicality, but "serves several ends: (1) it avoids piecemeal review by federal courts of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs." (*North Dakota Pharmacy Board v. Snyder's Stores* (1973) 414 U.S. 156, 159. See also *Republic Natural Gas Co. v. Oklahoma* (1948) 334 U.S. 62, 67-69; *Radio Station WOW v. Johnson* (1945) 326 U.S. 120, 123-124.)

> "The considerations that determine finality are not abstractions but have reference to very real interests—not merely those of the immediate parties but, more particularly, those that pertain to the smooth functioning of our judicial system." (*Republic Natural Gas Co. v. Oklahoma, supra,* at 69.)

The policy against premature constitutional adjudications demands that any doubt as to the finality of

a state court's judgment, upon which this Court's jurisdiction to review is conditioned, be resolved against jurisdiction; and the possibility that matters left open by a state court's judgment may generate additional constitutional questions requires a finding that the finality essential to a review of such judgment does not exist. (*Republic Natural Gas Co. v. Oklahoma, supra,* at 71-72.)

No "self-enforcing formula" can be devised to define when a judgment is final. (*Republic Natural Gas Co. v. Oklahoma, supra,* at 67.) In general, however, it may be said that the state court judgment must be final in the following respects to be within the Supreme Court's appellate jurisdiction: it must be subject to no further review or correction in any other state tribunal, and it must be an effective determination of the litigation and not of merely interlocutory or intermediate steps therein (*Market Street R. Co. v. Railroad Commission* (1945) 324 U.S. 548, 551), or it must end the litigation by fully determining the rights of the parties so that nothing remains to be done by the trial court except the ministerial act of entering the judgment which the appellate court has directed (*Republic Natural Gas Co. v. Oklahoma, supra,* at 68). Lastly, it must be clear that definitive disposition has been made of all the legal and factual issues in the case, and not of just the important ones or the federal ones. Thus, the requirement of finality is not met "merely because the major issues in a case have been decided and only a few loose ends remain to be tied up—for example, where liability has been determined and all that needs to be adjudicated is the amount of damages." (*Republic Natural Gas Co. v. Oklahoma, supra,* at 68.)

By the instant Petition, the defendants in a state court action for an accounting and other equitable relief brought by the California Attorney General to safeguard the assets of various charitable nonprofit corporations seek to have this Court review the denial by the California Supreme Court of their application for a prerogative writ, by which petitioners sought immediate review of the trial court's order appointing a receiver pendente lite. Petitioners apparently now contend that the appointment of a receiver (indeed, the lawsuit itself) violates their rights under the Religion Clauses of the First Amendment to the United States Constitution.

Respondent submits that under the foregoing criteria, the decision by the California Supreme Court denying petitioners' application for a prerogative writ is clearly not a "final" decision within the contemplation of Title 28, United States Code, section 1257. Certainly that decision, which has been rendered at the virtual inception of this litigation, is not a definitive disposition of all the legal and factual issues of this case; certainly it is not "an effective determination of the litigation [but only of an] interlocutory or intermediate step therein" (*Market Street R. Co. v. Railroad Commission, supra,* at 551); certainly it is not a final determination of the rights of the parties so that nothing remains to be done by the trial court (or the state appellate courts, for that matter) except a ministerial act. Petitioners argue that the First Amendment issues are ripe for review by this Court at this time because the Church "will continue to suffer incalculable harm so long as this proceeding continues." (Petition, p. 16.) Since the receivership has been stayed pending appeal in the state court, however, it no longer represents even a possibility of any continuing harm. Respondent thus submits that the federal constitutional questions which petitioners seek to present are not ripe for review.

B. Principles of Federalism Require the Court to Abstain.

A review of a lower federal or state court decision on a writ of certiorari is not a matter of right, but of sound judicial discretion. The writ should be granted only when there are special and important reasons therefor. (28 U.S.C. Rules of the Supreme Court, Rule 19; *Durham v. United States* (1971) 401 U.S. 481, 483.)

In exercising that discretion over the years, this Court has given recognition to various circumstances under which a federal court may decline to proceed with a review of a state court decision even though it has jurisdiction under the Constitution and statutes. This practical concept, generally referred to as the "abstention doctrine," cautions federal courts to stay the exercise of their power to review and assess state statutes in situations (1) where the case involves difficult and unsettled issues of state law which, if first decided by the state courts, might avoid the necessity for the federal courts to decide the asserted federal constitutional claims, (2) where there might be needless conflict with the administration by a state of its own affairs, and (3) where decision in a diversity case turns upon difficult and unresolved questions of state law. (R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 101-103 (5th ed. 1978); C. WRIGHT, LAW OF FEDERAL COURTS § 52 (3d ed. 1976).) In the recent landmark case of *Younger*

v. Harris (1971) 401 U.S. 37, Justice Black, speaking for the Court, described the doctrine as one of comity:

> ". . . that is, a proper respect for State functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as 'Our Federalism' . . . . The concept does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts . . . . What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." (*Younger v. Harris, supra,* at 44.)

In *Younger* it was held that federal courts should not enjoin pending state criminal prosecutions, even though the underlying state statute appears on its face to be possibly unconstitutional. The Court stated that the possibility of a "chilling effect" on First Amendment freedoms does not by itself justify federal intervention; nor are federal courts to test the constitutionality of a state statute "on its face" and then enjoin all action to enforce the statute until the state can obtain approval for a modified version thereof. A federal injunction

can run against a pending state criminal prosecution only on a "showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief." (*Younger v. Harris, supra,* 50-54.)

Although the Court in *Younger* did not speak to the situation in which a state has brought a civil action to enforce its laws, rather than a criminal prosecution, the general notion of "Our Federalism" that is at the heart of this decision certainly suggests that under ordinary circumstances a federal court should not interfere with civil actions in state courts in which the state, or an officer or agency of the state, is seeking to enforce state laws. For example, in *Lynch v. Household Finance Corp.* (1972) 405 U.S. 538, 560-61, Justice White, in a dissent joined by Chief Justice Burger and Justice Blackmun, stated that the considerations announced in *Younger* "are equally applicable where state civil litigation is in progress." This view has been confirmed in subsequent decisions.

In *Huffman v. Pursue, Ltd.* (1975) 420 U.S. 592, a state prosecutor brought an action to abate a public nuisance (to wit, a theatre showing allegedly obscene films). The defendant in the state action challenged the state statute on First Amendment grounds in an action in the United States District Court for declaratory and injunctive relief. In vacating the district court's decision holding the state statute unconstitutional, this Court held that the principles of *Younger* were applicable. This Court held that federal court intervention in such a state court proceeding is not justified unless the party seeking review establishes either (1) that the state proceeding is being conducted with an intent to harass or in bad faith, or (2) that the challenged statute is "flagrantly and patently violative of express

constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." (*Huffman v. Pursue, Ltd., supra,* 600-607, 610-611.)

In *Juidice v. Vail* (1977) 430 U.S. 327, this Court extended abstention principles to a federal civil rights suit brought by judgment debtors to enjoin state contempt proceedings, stating: "We now hold, however, that the principles of *Younger* and *Huffman* are not confined solely to the types of state actions which were sought to be enjoined in those cases." (*Juidice v. Vail, supra,* 334. The Court added:

> "Whether disobedience of a court sanctioned subpoena, and the resulting process leading to a finding of contempt of court, is labeled civil, quasi-criminal, or criminal in nature, we think the salient fact is that federal-court interference with the State's contempt process is 'an offense to the State's interest . . . likely to be every bit as great as it would be were this a criminal proceeding,' *Huffman, supra,* at 604, ... Moreover, such interference with the contempt process not only 'unduly interfere[s] with the legitimate activities of the Stat[e],' *Younger, supra,* at 44, . . . but also 'can readily be interpreted "as reflecting negatively upon the state court's ability to enforce constitutional principles."' *Huffman, supra,* at 604 . . . ." (*Juidice v. Vail, supra,* at 335-336.)

Finally, this Court has held that the principles of *Younger, Huffman* and *Juidice* are applicable to bar federal court interference (by entertaining a federal civil rights action) with a state's civil action to vindicate, by attachment of property, such important state policies as safeguarding its public assistance program against fraud. In *Trainor v. Hernandez* (1977) 431 U.S. 434, the State of Illinois had brought a civil action seeking the return of welfare payments obtained through fraud. The defendants in the state action brought a federal civil rights suit in the United States District Court seeking an injunction and a declaration that the state statute was unconstitutional. The district court held the state act invalid on its face. Upon appeal, this Court applied the foregoing principles of Federalism and held that the district court was in error in entertaining the civil rights suit.

In the case at bar, the State of California, acting through its Attorney General, has brought an action to safeguard the assets of various charitable nonprofit corporations from fraudulent misappropriation by the persons in control thereof. Clearly, by this action the State of California is seeking to vindicate its strong and legitimate public policies (1) against fraud and misappropriation, (2) that charitable assets be applied to charitable purposes, and (3) that the officers and directors of any corporation formed under state law operate that corporation in accordance with its articles of incorporation. Clearly, the state statute which petitioners seek to call into question (Calif. Corp. Code § 9505—Appendix B to the Petition) is not "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." (*Huffman v. Pursue, Ltd., supra,* 600-607); nor can petitioners make any showing that the prosecution of this action is being conducted in bad faith or with an intent to harass.

Respondent submits that for this Court to interject itself into this matter at this early stage, before the state courts have had sufficient opportunity to decide any questions concerning the constitutionality of Corporations Code section 9505 and these proceedings, would be in clear and direct violation of the aforementioned principles of Federalism.

II

Pursuant to Ancient and Settled Legal Principles Religious Organizations Hold Their Assets in Trust for Their Religious Purposes Which Are Also Charitable Purposes, and the State Attorneys General Are Charged With the Responsibility of Enforcing and Supervising Charitable Trusts

The courts of California have always held without exception that the secular affairs of church corporations are subject to supervision by the Attorney General and the courts. (*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850; *Wheelock v. First Presbyterian Church,* (1897) 119 Cal. 477.) In general throughout the United States religious purposes are regarded as charitable and trusts for religious purposes are enforced as charitable trusts. (See IV Scott on Trusts (3d ed.) § 371, p. 2880.)

The state attorneys general are charged with such duties of enforcement and supervision because the fulfillment of the purposes of charitable, including religious, organizations is thought to be of general benefit to society as a whole. In that sense, such entities are trustees of their assets for public benefit and hold such assets in trust for the religious or charitable purposes set forth in their governing documents. (*Pacific Home v. County of Los Angeles* (1951) 41 Cal.2d

844, at 851-852; *In re Metropolitan Baptist Church of Richmond, Inc., supra.* at 857.) Any diversion of such funds is a breach of trust. (*In re Metropolitan Baptist Church of Richmond, supra.* at 857; *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, at 759-760.) In California and in many other states the attorney general is the only party other than corporate directors or trustees (who in this case are the very persons accused of wrongdoing) who has standing to enforce a charitable trust. (*Holt v. College of Osteopathic Physicians & Surgeons, supra,* at 755-757; IV Scott on Trusts (3d ed.) § 391, p. 3006.) While the public as a whole is the beneficiary of all charitable trusts, members of the public (including in this case members of the Worldwide Church of God) have no clear authority to bring court actions to enforce a charitable trust.

This Court has recognized that the activities of religious organizations are of general benefit to society as a whole, and has on that basis held that a state grant of property tax exemptions to churches does not violate the establishment clause of the First Amendment. (*Walz v. Tax Commission* (1970) 397 U.S. 664, 680.) In discussing the public benefit aspects of religious organizations, Chief Justice Burger, speaking for the Court, observed:

> "New York, in common with the other states, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its 'moral or mental improvement,' should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious

group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by nonprofit, quasipublic corporations which include hospitals, libraries, playgrounds, scientific, professional, historical, and patriotic groups. The state has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest." (397 U.S. at 672-673.)

In his concurring opinion in *Walz, supra,* Justice Brennan stated that:

"Government has two basic secular purposes for granting real property tax exemptions to religious organizations. First, these organizations are exempted because they, among a range of other private, nonprofit organizations contribute to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens that would otherwise either have to be met by general taxation or be left undone to the detriment of the community." (397 U.S. at 687.)

"Second, government grants exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities. Government may properly include religious institutions among the variety of private, nonprofit groups that receive tax exemptions, for each group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society." (397 U.S. at 689.)

Finally, in his separate concurring opinion, Mr. Justice Harlan observed in the same vein as follows:

"The statute that implements New York's constitutional provision for tax exemptions to religious organizations has defined a class of nontaxable entities whose common denominator is their nonprofit pursuit of activities devoted to cultural and moral improvement and the doing of 'good works' by performing certain social services in the community that might otherwise have to be assumed by government. Included are such broad and divergent groups as historical and literary societies and more generally associations 'for the moral or mental improvement of men.'" (397 U.S. at 696-697.)

It follows that the state has a strong interest in preventing and correcting the fraudulent misappropriation of the assets of religious entities. The purposes of the Worldwide Church of God include secular public benefit activities similar to those to which the above quotations make reference. (Petition, pp. 4-5.) Moreover, the church receives significant contributions from members of the public outside the church membership. (Petition, p. 4.)

Enforcement by the various state attorneys general of charitable (including religious) trusts is an ancient and nearly universal practice in this nation. Such a practice must not lightly be cast aside on constitutional grounds. As Chief Justice Burger observed in *Walz, supra*:

"Yet an unbroken practice of according the [tax] exemption to churches, openly and by affirmative state action, not covertly or by state

> inaction, is not something to be lightly cast aside. Nearly 50 years ago, Mr. Justice Holmes stated: 'If a thing has been practiced for 200 years by common consent, it will need a strong case for the Fourteenth Amendment to affect it. . . .'" (397 U.S. at 678.)

The supervision of charity by state attorneys general goes back far longer than even 200 years. The attorneys general and chancery courts of England had such supervisory powers prior even to the enactment of the English Statute of Charitable Uses in 1601. (Stats. 43 Elizabeth I, c. 4; IV Scott on Trusts (3d ed.) § 368.1, p. 2858, § 391, p. 3002.)

III

The First Amendment Does Not Excuse the Perpetration of Fiscal Fraud in the Name of Religion, nor Does It Shield the Perpetrators From Corrective Action in the Courts

The petitioners' arguments that the Attorney General's efforts in this action to uncover and correct misappropriation of charitable funds somehow impedes impermissibly the free exercise of religion are grounded in the premise that the courts will never be able to distinguish successfully between the financial and business affairs of the church and its charitable trust on the one hand and its spiritual and ecclesiastical affairs on the other. The essence of such an argument is that the business and financial activities of a church at every level are inextricably intertwined with its religious activities and the fulfillment of its religious purposes, that it is impossible for the state to separate the secular activities of the church from its religious

activities, and that state supervision of the church's secular activities is therefore unconstitutional.

That assertion notwithstanding, however, the law is not such an ass as to be unable to distinguish between secular matters (including fiscal fraud) and ecclesiastical belief. In *Cantwell v. Connecticut* (1940) 310 U.S. 296, while invalidating a conviction for alleged unlawful solicitation of funds for religious purposes, this Court nevertheless made it plain that "[n]othing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." (310 U.S. at 306.)

This Court has also made it clear that the rule prohibiting "entanglement" between church and state does not apply to cases involving "fraud, collusion, or arbitrariness." (See, *e.g., Gonzales v. Roman Catholic Archbishop* (1929) 280 U.S. 1, 16; *Maryland and Virginia Eldership v. Church of God* (1970) 396 U.S. 367, concurring opinion of Brennan, J., fn. 3, at 369.)

Even Justice Douglas, as staunch an advocate of religious freedom as has sat on the Supreme Court in recent times, observed succinctly that he had no intention of intimating or suggesting "that any conduct can be made a religious rite, and by the zeal of the practitioners swept into the First Amendment." (*Murdock v. Pennsylvania* (1943) 319 U.S. 105, 109.)

IV

The Purpose and Effect of the Attorney General's Enforcement Action Is to Halt and Correct Fraudulent Diversion of Church, College and Foundation Assets and Not to Interfere With Any Religious Doctrine or Practice

The complaint alleges that the individual defendants have fraudulently diverted assets of the church to their own benefit. It further alleges that the church is under the absolute control of some of those named defendants, chiefly Mr. Rader and Mr. Armstrong. Defendants make no claim that fraudulent diversion is permitted by church doctrine or practice, and of course any such claim would of itself be fraudulent. Thus, the purpose of this lawsuit, to halt and correct fraudulent diversion, does not impact in any way upon any religious doctrine or practice. Therefore, cases involving government regulations or actions which adversely affect religious doctrine or practice are not in point.[6]

Obviously, California, as well as other states, has a strong policy forbidding fraudulent diversion of corporate funds, whether or not the affected corporation is a church. Likewise, the state has a strong policy that the officers of any corporation formed under state law obey the provisions of its articles of incorporation and operate the corporation by means of lawfully selected board members and not by the individual fiat of one man. These are neutral policies of law and are ap-

[6]Even governmental action which does have some adverse impact upon religious practice will not violate the First Amendment if its purpose and primary effect is to advance a rational and legitimate secular governmental purpose. (See *Johnson v. Robison* (1973) 415 U.S. 361, 384; *Gillette v. United States* (1971) 401 U.S. 437, 462; *Braunfeld v. Brown* (1961) 366 U.S. 599, 607.)

plicable in the same manner to religious corporations as they are to secular ones. (See *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440 at 449.)

Thus, the bringing of an enforcement action by a state attorney general raising such issues can violate no First Amendment rights. However, the question may arise whether the manner of implementing such a lawsuit might have an adverse effect upon religious practices by interfering in some way with the religious functioning of a church. The instant suit calls for the equitable remedy of an accounting by the church as well as the other charitable corporations and individual defendants, and any equitable relief to which the accounting shows that the beneficiaries of the charities are entitled. The suit also requests the appointment of a receiver pendente lite to safeguard church assets from continuing misappropriation and church records from alteration or destruction during the course of the action. The question for this Court is whether such relief is necessary to advance a rational and secular governmental purpose (correction of fraud and violation of state corporation laws). That inquiry is facilitated in the instant case by the fact that the receivership has been stayed in the trial court pending appeal. Thus, the receivership in the posture of this case can presently give rise to no arguable continuing invasion of First Amendment rights.

We are left with the narrow question as to whether the Attorney General's attempt to secure an accounting from the financial records of the church, in order to determine the extent of any fraud, violates any First Amendment rights. Much of the alleged fraud in this case consists of transactions between defendant Rader or businesses controlled by him and the church,

college or foundation.[7] Under these circumstances of course, all of the records of such transactions are either in the possession of Rader or the charities. With few exceptions, there would be no other sources for such evidence.

Rader himself refuses to answer questions on a deposition, refuses even to appear for a deposition, invoking the Fifth Amendment right against self-incrimination. His refusal to answer questions and to account is itself wrongful conduct for a fiduciary, and it emphasizes the necessity of examining the financial records of the charitable corporations, which it is alleged he controls, in order to determine the extent of his wrongdoing.[8]

Moreover, mere examination and copying of financial documents and questioning of witnesses to financial transactions can have little effect on either the religious practices or administration of the church. Whatever minor imposition this may present to the custodians of church financial records and to church employed witnesses who have knowledge of financial transactions is far outweighed by the legitimate secular governmental interest in correcting fraudulent diversion of corporate assets.

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[7]Such self-dealing transactions by fiduciaries are absolutely prohibited under California law. (Cal. Civ. Code, Secs. 2228-2235.) California courts hold that such prohibitions apply not only to trustees of charitable trusts but to officers and directors of charitable corporations as well. See, *e.g., People v. Larkin* (N.D. Cal. 1976) 413 F.Supp. 978, 981-982; *Lynch v. John M. Redfield Foundation,* (1970) 9 Cal.App.3d 293, 301.

[8]Rader was ordered by the trial court to appear on May 29, 1979 for his deposition. Rader refused to appear as ordered See Appendix C hereto containing Declaration of Lauren R. Brainard dated June 1, 1979, Exhibit A to Motion (filed in the trial court) for Order Holding Rader in Contempt.

This Court has approved far more extensive burdens upon individuals' rights to practice their religions in situations where such burdens were necessary to advance legitimate governmental interests. In *Gillette v. United States,* (1971) 401 U.S. 437 it was held that so-called selective conscientious objectors who objected only to the Vietnam War as an unjust war, rather than to war in any form, may constitutionally be required to perform military service. The court held, at page 462, that "incidental burdens [on the exercise of religion may be] justified by substantial governmental interests." In *Johnson v. Robison,* (1973) 415 U.S. 361 it was held that a conscientious objector who performed alternate civilian service in lieu of military service may constitutionally be denied veteran's educational benefits by the United States Government. In *Braunfield v. Brown* (1961) 366 U.S. 599, a Pennsylvania law requiring businesses to close on Sundays was upheld against the claim that it was unconstitutional as applied to merchants whose religion observed Saturday as the Sabbath and whose religious beliefs compelled them to close their businesses on Saturday. The state's interest in obtaining one day a week of entire peace and quiet was held to outweigh the burden upon the Sabbaterian merchants who were forced to close their businesses both Saturday and Sunday to their great economic detriment. (366 U.S. at 607.) Finally, in *Prince v. Massachusetts* (1944) 321 U.S. 158, the court held that a state child labor law forbidding minors from selling literature in public places did not violate the First Amendment rights of a child and her guardian where the guardian furnished the minor with religious literature and permitted her to distribute the same on the streets. It was held that

the state's interest in protecting children outweighed the consequent burden upon the religious practices of both guardian and child. (321 U.S. at 170.)

V

The State Does Not Seek to Change the Governance of the Church's Ecclesiastical Affairs

Petitioners assert without foundation that the state attempts in this suit to reorganize the church's structure from hierarchical to congressional form. Petitioners further claim that the state seeks to remove church officials without further explaining that the state does not seek to remove or affect in any way the ecclesiastical office or position of any ecclesiastical church authority or official.

The state does seek an order directing the church, college and foundation to comply with the terms of their articles of incorporation and the state laws under which such corporations were organized. Petitioners contend that such an order would infringe upon First Amendment rights. But they do not explain to what extent, if any, the terms of those articles or of California corporation laws conflict with church doctrine or practice.

Furthermore, if there were such a conflict, the question would arise as to why church leaders undertook to incorporate under such laws and to write such requirements into their articles of incorporation. The church was not compelled to incorporate under the California General Nonprofit Corporation Law (Calif. Corp. Code § 9000 et seq.). It could have used a different form of organization, such as a corporation sole (Calif. Corp. Code § 10000 et seq.) if religious

belief or practice had required church business to be dictated solely by a single individual without consultation with or permission of any board of directors.

The state seeks to remove individual defendants (who are not ecclesiastical officials) who may be found to have committed fraud from holding any office or employment in any of the subject charitable corporations, under the well-settled equitable principle that the court may remove trustees who are guilty of breaching their trust. We do not suggest that the court may remove any person from any ecclesiastical position which he may hold. However, if he misuses church funds such a person may constitutionally be disabled from doing so again by being removed from corporate office.

Conclusion

The purpose and effect of the state's action is to prevent and correct fiscal fraud in the administration of a church and the charitable corporations which it controls. Fiscal fraud is not a part of any religious doctrine or practice, and its prevention and correction cannot interfere with any such doctrine or practice.

The receivership pendente lite has been stayed and can therefore give rise to no continuing infringement of any First Amendment right. Petitioners have rights of direct appeal in state court and are proceeding to exercise them.

It is not inimical but rather it is vital to the preservation of religious freedom that the state correct fraudulent misappropriation of the assets of religious corporations. If there were no remedy for such misappropriations, the right of the public and of church members to have their contributions applied to the religious

purpose which they intend could be violated at will by the unscrupulous.

For the foregoing reasons, respondent respectfully prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX A.

First Amended Complaint for (a) Accounting, (b) Removal of Trustees, (c) Equitable Relief, (d) Appointment of a Receiver, and (e) Injunctive and Other Appropriate Relief.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, v. Worldwide Church of God, Inc., a California Nonprofit Corporation, Ambassador College, Inc., a California Nonprofit Corporation, Ambassador International Cultural Foundation, Inc., a California Nonprofit Corporation, Wilshire Travel, a Proprietorship, Worldwide Advertising, Inc., a California Corporation, Gateway Publishing, Inc., a California Corporation, Mid-Atlantic Leasing, a partnership, Excelsior Leasing, a Corporation, Environmental Plastics, Inc., a Texas Corporation qualified to do business in California, Herbert W. Armstrong, Stanley R. Rader, Osamu Gotoh, Robert Kuhn, Raymond L. Wright, Henry Cornwall, Ralph Helge, the Accounting Firm of Rader, Cornwall, Kessler and Palazzo, and Does 1 through 100, Inclusive, Defendants. No. C 267-607.

AS A FIRST CAUSE OF ACTION FOR ACCOUNTING, PLAINTIFF ALLEGES:

1. George Deukmejian is the duly constituted Attorney General of the State of California, and as such is charged with the supervision of all charitable organizations within this state and with the supervision of trustees and fiduciaries who hold or control property in trust for charitable and eleemosynary purposes. This action was originally brought by and on behalf of

the People of the State of California on the relation of individuals who had been granted leave to sue by the Attorney General. Its purpose is to correct the abuse of charitable trusts. The six individually designated relators have since withdrawn, and sole responsibility for the action now rests with the Attorney General.

2. Defendant Worldwide Church of God, Inc. (hereinafter the Church) is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Church was organized exclusively for charitable and religious purposes, and all of its assets are dedicated irrevocably to those purposes such as are set forth in its articles of incorporation a copy of which is attached hereto and incorporated herein as Exhibit 1. At all times since its incorporation in 1934 it has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

3. Defendant Ambassador College, Inc. (hereinafter the College), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The College was organized exclusively for educational (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes such as are set forth in its articles of incorporation, a copy of which is attached hereto and incorporated herein as Exhibit 2. At all times since its incorporation in April 1951 it has been exempted from taxation by the State of California under Revenue

and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

4. Defendant Ambassador International Cultural Foundation, Inc. (hereinafter Foundation), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Foundation was organized exclusively for cultural (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes, such as are set forth in its articles of incorporation, a copy of which is attached hereto and incorporated herein as Exhibit 3. At all times since its incorporation in March 1975 the Foundation has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

5. By reason of the exemption from tax of the property of the Church and the College and the Foundation, as above alleged; and also by reason of the fact that all donations and contributions to the Church, the College and the Foundation have been deductible from income by the donors and contributors for purposes of computing their federal and state income taxes; plaintiff is informed and believes, and therefore alleges, that the Church, the College and the Foundation have enjoyed substantial public subsidies amounting over the last ten years to more than $150,000,000.

6. Defendants Stanley R. Rader, Herbert W. Armstrong, Ralph Helge, Henry Cornwall, Osamu Gotoh, Robert Kuhn, Raymond L. Wright, and Does 1 through

50 are and at all relevant times have been either officers, directors, or full-time employees of one or more of the above-named charitable entities (hereinafter referred to collectively as the Church, the College and the Foundation) or one or more of the following named for-profit defendants, or both. All of the acts herein complained of have been done with their knowledge and complicity, and under their supervision. In addition, each individual defendant is legally responsible for the act and omissions of his co-trustees.

7. Plaintiff is informed and believes, and on that basis alleges, that defendants Worldwide Advertising, Inc. and Gateway Publishing, Inc. are California corporations; that Does 51 through 100 are corporations, partnerships or other business entities; that Environmental Plastics, Inc. is a Texas corporation qualified to do business in California; that Rader, Cornwall, Kessler and Palazzo is an accounting firm formed either as a California professional corporation or a partnership; that Mid-Atlantic Leasing is a corporation or partnership; that Wilshire Travel is a proprietorship; that Excelsior Leasing is a Pennsylvania corporation qualified to do business in California; that the above are hereinafter referred to collectively as the for-profit defendants. Plaintiff is informed and believes, and on that basis alleges, that each of the for-profit defendants is owned or controlled by one or more of the officers or directors of the Church, the College or the Foundation, including particularly the defendant Stanley R. Rader; that funds and property contributed to the charitable entities are freely transferred among them and the for-profit defendants; that financial and business records of the charitable entities have been and continue to be in the custody and possession of the for-profit

defendants; and that the unity of record ownership and actual control among the charitable entities and the for-profit defendants, and the course of dealing between them, has been for many years and is now such that for all purposes of this accounting, it would be unjust and inequitable to recognize any separate existence among them at all. The exact status and constitution of the for-profit defendants, and their precise relationship with the charitable entities, are matters not known to plaintiff at this time, but are peculiarly within the knowledge of the defendants; and plaintiff will ask leave of the Court to amend this Complaint to show their true status and constitution, and the exact nature of their relations with the charitable entities when the same have been ascertained.

8. The true names and capacities of defendants Doe (whether individual, corporate, associate or otherwise) and the true nature of their relationship with the other defendants, is presently unknown to the plaintiff, but is peculiarly within the knowledge of the individual named defendants. Plaintiff, will ask leave of the Court to amend this complaint to show the true names and capacities of the defendants Doe, and the true name of their relationship, when the same have been ascertained.

9. Defendants HERBERT W. ARMSTRONG and STANLEY R. RADER are and at all times pertinent to this Complaint have been in full and complete control of the Church, the College, the Foundation, and all of their affairs. HERBERT W. ARMSTRONG is and has been Pastor General of the Church ever since its formation, and has been an officer and director of the College and Foundation as well as the Church at all times since their formation. Defendant Stanley

R. Rader has acted as general counsel and chief financial adviser of the three entities for the past fifteen years, and for the past four years has acted and is presently acting in at least the following capacities: as director, executive vice-president, executive director, vice-president for financial affairs, secretary-treasurer and general counsel.

10. The Church, the College and the Foundation, as well as the individual named defendants (including Does 1-50), hold and are responsible for the assets of the three charitable entities, as trustees, subject to supervision by the Attorney General and ultimately by this court. The ultimate beneficiary in each instance is the public which benefits generally from all charitable endeavors. None of the defendants has or may legally have any proprietary interest in the assets and properties of the Church, the College or the Foundation, nor in their books and records.

11. The Church, the College, the Foundation and the individual named defendants as their officers and directors are required by law to account to the public and this court for all funds received, expended, or held by the three entities. Notwithstanding this duty to account, and repeated requests by plaintiff and members of the Church, these defendants have failed and refused, and still fail and refuse, to make any such accounting at all.

12. The need for an accounting by defendants in this case is particularly acute for each of the following reasons:

(a) Plaintiff is informed and believes, and on that basis alleges, that for a period exceeding

ten years the individual and for-profit defendants (including Does 1-100), acting in concert with and under the direction of defendants Armstrong and Rader, have been and are siphoning off and diverting to their own use and benefit assets and properties of the Church, the College and the Foundation, on a massive scale increasing in the last several years to millions of dollars per year, and causing substantial fiscal deficits in their operation.

(b) Although much of the funding for the Church, the College and the Foundation is generated through contributions and other payments and tax subsidies provided by the public as a whole, a major source of funds for the Church has come from tithing of its members. As Pastor General of the Worldwide Church of God, and as the self-proclaimed Ambassador of God on earth, Herbert W. Armstrong has directed all members of the Church to contribute the first ten percent (10%) of their gross income. Failure to do so, according to Armstrong's published disseminations to the members, is ". . . STEALING from GOD . . . and is SIN, which will cost you your SALVATION!" By reason of such representations and exhortations, a special fiduciary relationship has been created in which Mr. Armstrong, Mr. Rader and the other individual defendants owe the highest duty of accountability, not merely to the general public which is interested in preventing fraud, but also the members and former members who have not only given their money but have also placed their trust in the defendants to use it strictly for God's Work.

(c) In the solicitation of funds, defendant Armstrong has not always been candid. From time to time throughout the past ten years the Church has sent out special and urgent requests for contributions to be made at great personal sacrifices to the donors. Attached hereto and incorporated herein as Exhibit 4 is one such request dated March 30, 1970. The letter speaks of a "tight money situation" requiring cutbacks in Church salaries, publications and operating expenses in all departments of the Work;" it states that "God's Work" needs "IMMEDIATE CASH"; and on the suggestion of ". . . Mr. Rader, our legal counsel and financial adviser," members are asked to borrow whatever they can, so long as they do not lower the income for the "Work" through the rest of the year. The true nature of the alleged fiscal emergency is exemplified by two purchase orders attached hereto and incorporated herein as Exhibit 5. Mr. Armstrong's letter of March 30, 1907, failed to disclose, among other pertinent facts, the purchase for his Pasadena residence of a $6,090.00 crystal candelabra on January 2, 1970, and French porcelain vases for $2,079.00 on March 31, 1970.

(d) In addition to the first 10% tithe (for God), and a second 10% tithe (to provide for the member's expenses at the annual Festivals), there is a third tithe imposed by the Church on its members consisting of ten percent (10%) of their gross income every third year. Throughout the past ten years this contribution has been expressly solicited as a special fund for widows and orphans. A trust has been imposed on these

funds which requires that they be used only for such purposes. Plaintiff is informed and believes and thereupon alleges that an accounting has never been rendered of the receipt and disposition of these funds, and that they have been diverted to purposes other than those for which they were solicited and donated.

13. Because the named individual defendants are now, and at all times pertinent to this action have been in full, effective and exclusive control of all the property, assets, records and administrative facilities of the Church, the College and the Foundation; and because they have consistently denied and still presently deny meaningful access to such records by the Attorney General of the State of California, plaintiff has no alternative but to make many of the allegations of this complaint on information and belief. Plaintiff will ask leave of the Court to amend this complaint in all pertinent respects when the particular facts concerning the actions complained of have been ascertained.

AS A SECOND CAUSE OF ACTION FOR REMOVAL OF INDIVIDUAL DEFENDANTS AS TRUSTEES, AND FOR INJUNCTION, PLAINTIFF ALLEGES:

14. Paragraphs 1 through 13 of the First Cause of Action are incorporated by reference into and hereby made a part of this Second Cause of Action.

15. Plaintiff is informed and believes and thereupon alleges that defendant Herbert W. Armstrong is 86 years of age; that he has suffered a heart attack; that he no longer resides in California; and that he is not in daily control of the operations of the Church, the College or the Foundation. The exact nature and

extent of his involvement and participation in the diversion of charitable funds hereinabove alleged, either at the present time or in the past, is currently unknown to plaintiff, but is peculiarly within the knowledge of the defendant Armstrong and the other defendants. Plaintiff will ask leave to amend his complaint to show the true facts when the same have been ascertained.

16. Plaintiff is further informed and believes, and thereupon alleges, that for all practical purposes, the financial affairs of the Church, the College and Foundation are now and have for some time been controlled by the defendants Stanley R. Rader, Osamu Gotoh, Ralph J. Helge, Robert Kuhn, Raymond L. Wright, and Henry Cornwall.

17. In addition to his official capacities described above in paragraph 9, Rader has claimed additional power and authority since January 4, 1979 by reason of a directive purportedly issued on that day by the defendant Armstrong, a copy of which is attached hereto and incorporated herein as Exhibit 6.

18. Since this action was filed in January 1979, defendants Rader and Helge have done everything within their power to deny plaintiff access, not only to the books and records of the Church, College and Foundation, but to individuals with knowledge of the operation and financial affairs of said charitable entities.

19. Plaintiff has been endeavoring since January 31, 1979, when this court first so ordered, to examine Rader under oath in deposition concerning his fiduciary relationship to the Church, College and Foundation, and the manner in which he has carried out his responsibilities. Rader failed and refused to appear until further ordered to do so on April 3 and 4, at which time he refused to answer proper questions, and ultimately announced unilaterally that he was leaving the deposition and would not participate any further therein. A copy of the transcript of Rader's deposition is being lodged with this court in connection with plaintiff's Motion to Compel Discovery, and is hereby incorporated by reference and made a part of this complaint.

20. By reason of each and all of their acts and omissions hereinabove related, the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge have failed and refused to comply with the trust which they have assumed; each of them has departed and caused the Church, College and Foundation to depart from the charitable purposes he and they were bound to serve; and each of said defendants should be removed from all responsibility in connection with the Church, College and Foundation.

21. Further, plaintiff is informed and believes, and therefore alleges that the said defendants have caused the Church, College and Foundation to enter into various purported contracts of employment and other contracts with each of the said trustees, providing for compensation and reimbursement of expenses. Plaintiff alleges that all of said contracts were entered into by the Church, College and Foundation without sufficient consideration and under undue influence, and without proper corporate authority; and alleges that each of said contracts should be cancelled and determined to be null and void. A copy of the Employment Contract of Stanley R. Rader dated July 30, 1976 is attached hereto, marked Exhibit 7, and is incorporated herein by this reference.

22. Plaintiff further alleges that each of the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge should be perpetually enjoined and restrained from serving as officers or directors, or any other capacity, with respect to the Church, College or Foundation or any other California charitable trust or organization.

AS A THIRD CAUSE OF ACTION FOR ORDERS REQUIRING COMPLIANCE BY THE CHURCH, COLLEGE AND FOUNDATION WITH CALIFORNIA LAW PERTAINING TO NONPROFIT CORPORATIONS ORGANIZED FOR CHARITABLE PURPOSES, OR FOR OTHER APPROPRIATE RELIEF, PLAINTIFF ALLEGES:

23. Paragraphs 1 through 13 of the First Cause of action, and paragraphs 15 through 22 of the Second Cause of Action, are hereby incorporated by reference into and hereby made a part of this Third Cause of Action.

24. By virtue of the facts hereinabove alleged, the defendant charitable entities have claimed the benefits of incorporation as nonprofit corporations organized for charitable purposes under the laws of the State of California which benefits include among others the substantial tax subsidies and exemptions hereinabove referred to; but the said charitable entities have failed in numerous respects to comply their obligations under said laws, as follows:

(a) Claiming that their organization is "hierarchical," the charitable entities have never been subject to the governance of any board of directors, board of trustees or other independent body, authorized and empowered to supervise and preserve charitable funds collected and held by them as required by law;

(b) Notwithstanding that the bylaws adopted by the charitable entities called for a vote of the members on numerous matters of importance, including amendment to the articles and bylaws, dissfellowshipment of members and other matters, no member of said charitable entities has ever voted or been permitted or requested to vote on any matter and no vote of the members has ever been held on any subject. In this connection, plaintiff is informed and believes, and thereupon alleges, that although statements were filed with the Secretary of State reflecting a purported vote of the membership on certain amendments to articles of incorporation of the defendant Church, no such vote and no such election was ever held, as the defendants herein are well aware.

(c) The defendants have taken the position that their bylaws may be altered or entirely disregarded whenever it suits their purposes, since said bylaws are "viewed only as guidelines, which are subject to spiritual interpretations (by defendants) and are subordinate to the higher law of God." A copy of the Declaration of defendant Helge, dated January 11, 1979 and filed with this court on or about January 12, 1979, is attached hereto as Exhibit 8 and is hereby incorporated by reference and made a part of this complaint.

(d) Claiming that all decisions of the defendants Armstrong and Rader are "religious" or "Spiritual," including all decisions affecting the disposition of charitable trust funds collected and held by the Church, College and Foundation, defend-

ants have taken the position that all of their financial decisions and expenditures, including the disposition of funds for their personal use and benefit, is protected and exempted from review or scrutiny by anyone, including this court, by virtue of the First Amendment; and have thereby claimed and continue to claim that they are entitled to dispose of charitable funds as they please.

25. The defendants Church, College and Foundation should be required by this court to comply with their obligations under the laws of the State of California pertaining to nonprofit corporations organized for charitable purposes in all respects, including among others the following: (a) The Church, College and Foundation should be required to select a board of directors, board of trustees, or other board authorized and empowered to oversee and supervise its financial affairs (as distinguished from its ecclesiastical or spiritual affairs), in such manner as to provide reasonable assurance that the charitable trust funds collected and held by such charitable entities will be applied solely to the charitable uses to which they were donated, and will not be diverted or misapplied for the personal benefit of any individual, or for any other improper purposes; (b) The Church, College and Foundation should be required to take such steps as may be necessary or appropriate to keep and maintain proper records of their financial and business transactions, and to prepare and cause to be rendered periodic accountings of their financial and business affairs as required by law; (c) The Church, College and the Foundation should be required to take such steps as may be necessary or appropriate to prevent the dissipation of charitable trust funds in the future, and to

recover such charitable trust funds as have previously been allowed by them to be dissipated or diverted by improper purposes.

26. If and to the extent the Church, College and Foundation cannot be made to comply with their legal obligations in exchange for obtaining the benefits of their status as charitable California corporations, the court should make such other orders and grant such other relief as may be necessary or appropriate under the circumstances to preserve the charitable funds which have been accumulated by them, and which are presently entrusted to their care and custody.

AS A FOURTH CAUSE OF ACTION FOR RECEIVER, PLAINTIFF ALLEGES:

27. Paragraphs 1 through 13 of the First Cause of Action and Paragraphs 15 through 22 of the Second Cause of Action and Paragraphs 24 through 26 of the Third Cause of Action, are hereby incorporated by reference into and made a part of this Fourth Cause of Action.

28. Based on limited and sporadic statements issued by defendants to the membership of the charitable entities, plaintiff is informed and believes, and on that basis alleges, that they receive approximately $70 million per year in contributions, and that they have a net worth of approximately $80 million. Most of their net worth is held in the form of real estate.

29. Plaintiff is informed and believes, and on that basis alleges, that between January 1, 1975 and the present date, the charitable entities have spent and continue to spend at least $1 million more each year than they receive in contributions and, for that reason,

have been forced to liquidate some of their holdings in order to defray their current expenditures. All the excess of expenditures over receipts is attributable to the individual defendants' pilfering of the revenues of the charitable entities and their misappropriation of charitable assets to their own personal use and benefit, which pilfering and misappropriation continues to this very day on a massive scale. So long as the individual named defendants remain in full, effective and exclusive control of the business affairs of the charitable entities, they alone will continue in the future, as they have in the past, to determine the nature and extent of all their expenditures.

30. Plaintiff is informed and believes, and on that basis alleges that during the last six months, as part of their program of misappropriating the assets of the charitable entities to their own use and in order to facilitate said misappropriation, the individual defendants have been liquidating the properties of the charitable entities on massive scale; and that in Southern California alone, over twenty parcels of property belonging to one or more charitable entities have been sold in the last year, many of them at prices well below their market value.

31. Plaintiff is further informed and believes, and on that basis alleges that one of the largest properties of the College is a 1600-acre parcel in Big Sandy, Texas, which is worth substantially in excess of $10.6 million; yet the individual defendants have been attempting to sell the aforementioned parcel to a third party for approximately $10.6 million; and these defendants have attempted to conceal the true worth of the Big Sandy property, and have instead published false statements, known by them to be false, to the

effect that the property aforesaid is worth only about $8 million. All these statements and activities are part of their effort to convert the assets of one or more of the charitable entities into a form in which they may be more easily appropriated to the personal use and benefit of the individual defendants. Further, plaintiff is informed and believes that the defendants have established no procedures or safeguards to ensure that the proceeds of sale of the Big Sandy property, which belong to the College and which ought to be used exclusively for charitable and educational purposes, will be applied to that charitable use; but instead, defendants have announced publicly their intention to "get out of the college business," and to divert the proceeds of said sale to the Church and the Foundation, and to uses other than those for which they are entrusted.

32. Plaintiff is further informed and believes, and thereupon alleges, that the individual named defendants, in an effort to frustrate discovery of their wrongdoing and to obscure the facts, have caused and are causing the written records of their dealings to be removed from the Pasadena offices of the defendant corporations, and to be shredded and destroyed; and that if said removal and destruction are allowed to continue, it may never be possible to develop a true and complete accounting of the finances of the charitable entities during the time period complained of.

33. Since this action was commenced on January 2, 1979, and after a receiver was appointed herein, the individual defendants have pursued a course of conduct designed to divert donations, funds and assets of the charitable entities to themselves at Tucson, Arizona and elsewhere; and thereafter to apply said funds for their personal use and benefit in various ways,

including the appointment of numerous firms of attorneys to represent their personal interest while ostensively acting as counsel for the charitable entities. In this regard, individual defendants have purported to effect an amendment to the bylaws since the commencement of this action, granting them alleged indemnification for their legal expenses, not only in connection with the instant action and any other civil action which has been instituted by them or against them in the state and federal courts, but also for any expenses they may incur in defending against criminal charges arising out crimes or alleged crimes committed by them against the charitable entities (as set forth at pages 11 and 12 of the purported bylaws attached to the Declaration of Helge, Exhibit 8 to this complaint). Plaintiff is further informed and believes, and thereupon alleges that the defendants have already paid or incurred legal expenses in connection with the present action and related litigation of nearly $1 million, all of which they have paid or intend to pay out of charitable funds properly the property of the charitable entities herein.

34. The appointment of receiver pendente lite for the charitable entities is necessary forthwith to prevent the continued misappropriation of charitable funds and assets to the personal use and benefit of the individual defendants; to halt the imminent and massive selling-off of valuable properties at prices well below their market value; and to prevent the further destruction of financial and business records of the charitable entities and to conduct an independent investigation of claims which the charitable entities may have against the individual named defendants and others, and thereafter to file and pursue such suits and actions on behalf of the charitable entities as may be appropriate.

AS A FIFTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF PLAINTIFF ALLEGES:

35. Paragraphs 1 through 13 of the First Cause of Action, 15 through 22 of the Second Cause of Action, 24 through 26 of the Third Cause of Action, and 28 through 33 of the Fourth Cause of Action are hereby incorporated into and made a part of this Fifth Cause of Action.

36. The Receiver will require access to the books and records, and to the administrative facilities, of the charitable entities in order to discharge his duties, and in order to protect and preserve their assets pendente lite; but the individual named defendants threaten to deny such access to any person other than themselves, and have demonstrated an intention to remove and destroy said books, records, and facilities, rather than to let any other person see them; and unless enjoined and restrained from doing so by this Court, they will do so, and will not yield up the said assets and records to the receiver.

37. The individual named defendants are engaged in an on-going program of liquidation of charitable assets, and have already entered into agreements to sell many of said properties at prices well below their market value; and unless they and those with whom they deal are enjoined and restrained from doing so by this Court, they will sell, transfer, mortgage, and encumber said properties without providing any safeguards for their preservation and use for the charitable purposes impressed on such assets.

WHEREFORE PLAINTIFF PRAYS:

1. For an order requiring defendants to make a full and complete accounting to this Court of the

affairs of the defendant charitable entities from January 1, 1975 through the date of said accounting; and for a further accounting of the third tithe, and of all transactions between any of the defendant charitable entities and any of the individual defendants or the defendant for-profit entities, from January 1, 1970 through the date of said accounting;

2. For an order removing the defendants Rader, Gotoh, Kuhn, Wright, Cornwall, and Helge from holding any office or employment in or under the defendant charitable entities, and cancelling and nullifying any contracts of employment which may have heretofore been entered between them and said entities and further enjoining and restraining said defendants from holding any office of employment under the said charitable entities in the future, or in or under any California charitable corporation trust or charitable organization;

3. For an order directing the defendants Worldwide Church of God, Ambassador College, Inc., and Ambassador International Cultural Foundation to comply with their obligations under the laws of the State of California pertaining to nonprofit organizations organized for charitable purposes; and in the event of their failure so to comply, for such additional equitable relief as may be necessary, appropriate or requisite in the premises to secure the preservation and proper application of the charitable funds presently in their possession and under their control;

4. For an order appointing a receiver pendente lite to take possession, until further order of this Court, of all the property of the defendant charitable entities aforesaid, and of their books and records, and empowering him to take such actions as he deems, in the reasonable exercise of his discretion, appropriate

to recover property and assets wrongfully taken from them, and to prevent the further dissipation of charitable property and assets, said power to include without limitation the power to bring lawsuits in the name of the charitable entities, and to retain independent accountants, lawyers, and other professional assistants to assist him in the prosecution of such lawsuits;

5. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concert with them, from interfering in any way with the actions of said receiver, and requiring them furthermore to yield up to said receiver all the books, records, and administrative facilities of said charitable entities;

6. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concert with them, from selling or mortgaging, or asserting ownership in any other way, over the property or assets of any of the charitable entities, except as the court-appointed receiver may allow,

7. For costs of suit herein;

8. For such other and different or further relief as to this Court may seem just and proper.

DATED: April 12, 1979.

GEORGE DEUKMEJIAN, Attorney General
LAWRENCE R. TAPPER,
LAUREN R. BRAINARD,
Deputy Attorneys General
By /s/ Lawrence R. Tapper
LAWRENCE R. TAPPER
Deputy Attorney General
Attorneys for Plaintiff.

APPENDIX B.

From the January 10-13 Hearing for Appointment of Receiver:

Pages 141-147:

THE WITNESS: Stanley R. Rader, R-a-d-e-r.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Rader, just to begin with, I noted a moment ago, from what Mr. Browne said and what you said, that members of the church prefer to affirm and not to swear; is that correct?

A. That is correct.

Q. Is there some religious tenet of the Church of God against swearing?

A. Yes.

MR. BROWNE: Objection. I don't believe—

THE COURT: The objection is sustained. It is irrelevant.

Q. BY MR. CHODOS: Mr. Rader, are you the man—

May I approach the witness, Your Honor?

THE COURT: All right.

Q. BY MR. CHODOS: Are you the man who took this affidavit that was prepared for Mr. Armstrong's signature to Tucson to have him sign it, the one that was filed in the court?

A. No.

Q. Did you see it before it was filed with the court?

A. I'm not sure if I saw it before it was filed with the court, no.

Q. It starts out and says:

"Herbert Armstrong being duly sworn upon his oath deposes and states."

And at the end it concludes, "subscribed and sworn to before me this 5th day of January, 1979," and has the signature of a notary public.

Mr. Rader, in your acquaintance with Mr. Armstrong, does he swear or does he affirm?

MR. BROWNE: Objection, Your Honor. It's irrelevant.

THE COURT: Sustained.

Q. BY MR. CHODOS: Mr. Rader, Mr. Browne mentioned your employment contract. Do you have a copy with you?

A. No.

MR. BROWNE: I do.

MR. CHODOS: Perhaps you could give one to the witness.

MR. BROWNE: Shall I give one to the witness, Your Honor?

THE COURT: Yes, please.

MR. BROWNE: For the record, I'm handing the witness the document on the stationery of Worldwide Church of God, dated August 1, 1976, signed by Herbert Armstrong, followed by employment and consulting agreement, numbering 18 pages, followed by employment and consulting agreement addendum, one page.

MR. CHODOS: Can I have a copy to look at?

MR. BROWNE: I haven't collated them all. If you will wait a second.

I have given a copy to counsel, Your Honor.

THE COURT: All right.

Q. BY MR. CHODOS: Mr. Rader, is that the employment contract that as far as you are concerned is presently in force between you and the church?

A. Yes.

Q. The contract says—

Your Honor, I would like to mark that as Exhibit 3, I believe it is.

THE CLERK: Plaintiffs' 3, Your Honor.

THE COURT: It is marked.

MR. CHODOS: 1 and 2 were introduced at the earlier hearing, Your Honor.

1 was an authorization by Judge Weisman, and 2 was the original press release signed by Mr. Armstrong appointing Mr. Cole—

THE COURT: All right.

Q. BY MR. CHODOS: Do you have a pencil, Mr. Rader?

A. A pen.

Q. Just put a 3 in the lower right-hand corner of the first page in a circle.

A. (Marking.)

Q. Thank you, Mr. Rader.

Mr. Rader, this document indicates that it was made and entered into on the 30th day of July, 1976 between you and the church; is that correct?

A. That is what the contract says.

Q. Is that the truth?

A. I'll stand on the written record.

Q. And—

A. This is what it says. It's signed by me and Mr. Armstrong.

Q. Mr. Rader, my question was did you sign it on July 30, 1976?

A. I can't remember that. I told you I'll stand on what the paper says.

Q. Mr. Rader, who drew this contract?

A. This contract was drawn probably by a young associate in the firm of Ervin, Cohen and Jessup after discussions with me.

I think his name is Greg somebody. I don't know his last name.

Q. Gittler?

A. No.

Q. And was Ervin, Cohen and Jessup representing you in that matter?

A. No.

Q. Who were they representing?

A. I asked them to help to prepare these documents based upon instructions that had been given to me by Mr. Armstrong, and contracts with us prepared for Mr. Armstrong for his son Garner Ted Armstrong and for me all at the same time.

Q. In other words, there were three contracts prepared at the same time.

Were they all prepared by Ervin, Cohen and Jessup?

A. They were, to my knowledge, put into final form for Mr. Armstrong by the firm of Ervin, Cohen and Jessup, by a particular man named Greg somebody, whose last name I can't recall.

Q. And, Mr. Rader, you were the individual, were you not, who transmitted to Ervin, Cohen and Jessup's

firm the information as to what to put in these contracts for the three people?

A I told Ervin, Cohen and Jessup's firm what provisions, in general, Mr. Armstrong wanted, what he was trying to accomplish by the employment contracts for each of the people. And I told them to put it into good form, and they did so.

Q Now, on page 2, Mr. Rader—sorry—page 1 of the agreement, in paragraph A, it recites that since March 1975, which is a year and three months earlier than the date of this agreement, it says "Rader has served as and is presently serving as a director, executive vice president, executive director, vice president for financial affairs, secretary-treasurer and general counsel for the church and for its related entities."

Do you see that quote?

A Yes, very clearly.

Q And you were serving in all those capacities at the time this agreement was drawn up and signed, weren't you?

A Yes. But we would have to indicate which entity we are talking about and make specific which title I had in each one of the entities.

Q We will come to that in a minute.

Now, Mr. Rader, you were the general counsel for the church. Was that you, yourself, or was that your firm of Rader, Helge and Gerson?

A The firm of Rader, Helge and Gerson is merely an association of three lawyers, and Mr. Helge is the person who deals primarily with the church and its related affairs as these problems come up.

* * *

Pages 150-171:

Q Mr. Rader, who advised the church about the advisibility or the propriety or desirability of this contract?

A Mr. Herbert Armstrong is God's apostle. He is Christ's representative here on earth at this time. He, by the powers that have evolved upon him spiritually and which, as I understand, after constant review with my co-counsel, Mr. Helge, he has the power to hire and fire, set rates of compensation, things of that nature, and has done so consistently for 46 years.

Q Mr. Rader, he is not a lawyer, is he, Mr. Armstrong?

A No, sir, he is not a lawyer.

Q Did he have any other lawyers advising him besides you and Mr. Helge about this matter?

A Mr. Herbert Armstrong calls upon lawyers when and if—

THE COURT: Mr. Rader, I think it will help us all if you will listen to the question. You are a lawyer.

THE WITNESS: All right.

THE COURT: All right.

THE WITNESS: Can you repeat the question, please.

MR. CHODOS: I'll repeat it.

Q. Did he have any other lawyer besides you and Mr. Helge advising him about entering into this contract from the church when he did so?

A. Not to my immediate first-hand knowledge.

Q. Mr. Rader, there have been other transactions between you and the church in the past few years, the purchase of your home and so on; is that correct?

A. In which years?

Q. Let's take your home on Loma Vista, Mr. Rader.

The home on Loma Vista was originally purchased by the church with church money; is that correct?

MR. BROWNE: Objection, Your Honor. Let me tell you why I'm objecting here.

It's too remote. I'll offer to show that the home was purchased in 1971, and we are prepared to go into that transaction—it occurred eight years ago—to show how the home was purchased, how Mr. Rader assumed the obligations, the fact the money of the sale of the previous home went into it.

The occurrence in 1971 does not have the immediacy for this hearing. I think this Court wants to know what has happened in the last 90 days, what has happened in the last 60 days.

THE COURT: Mr. Browne, we can't separate it to that extent. I think some background is going to be necessary.

And I am going to have to rely on the good judgment of counsel, both of you, not to enlarge this to the full trial on the merits. Some background is going to be necessary.

MR. BROWNE: I think eight years ago is—

THE COURT: It is a big asset he is talking about, and I think he is entitled to go into that, but only cursorily.

MR. CHODOS: If I can have 20 minutes I'll be through with this part.

THE COURT: Another comment I want to make, gentlemen, and that is going to help us move this

along, and that is if you are going to make an objection, you make your objection in legal form and stop. If I require any argument, I will let you know.

Q. BY MR. CHODOS: Mr. Rader, the question was, in 1971 the church bought the house at 840 Loma Vista; is that correct?

A. That is not precisely correct.

Q. Originally the title was put into your name; is that correct?

A. Title was in my name upon—

Q. You have answered the question.

A. Yes.

MR. BROWNE: Your Honor, objection. Can the witness give an answer, and if it requires an explanation let him do it without counsel saying, "You have answered the question"? We are on a fact-finding mission.

THE COURT: All right. Mr. Chodos, give him a chance to explain if he so desires.

Q. BY MR. CHODOS: When the property was originally acquired, was the title put in your name?

A. When the property was originally acquired the property was put in my name. And that was under the specific direction and authorization of Mr. Herbert W. Armstrong who actually selected the home.

Q. All right. Now a few months after—

The money for buying the property came from the church funds, didn't it?

A. The money for the purchase of the property, as I recall, was borrowed on a short-term basis from the United California Bank for the purpose of buying the house for cash.

Q. It was borrowed by the church and then paid to buy the house?

A. That's correct.

Q. Now, Mr. Rader, a few months after the house was originally bought, you quitclaimed the property to the church, didn't you?

A. That's correct.

Q. Then about a couple of years later the property was transferred by the church into your name again; is that right?

A. No. Approximately one year later, when the permanent financing was arranged, I quitclaimed the property to the church so that the financing would be available once it became impossible for me, as an individual, to acquire it all by myself.

After the financing had been arranged for, as my affidavit indicated, the property was then transferred to me, I believe, January 1972, or approximately thereof, and I then assumed some mortgages, gave back a second mortgage, and transferred other property to the church.

Q. Mr. Rader, at the time that all this was happening, your firm was providing legal counsel to the church, and your other accounting firm was providing accounting services to the church; is that right?

A. In 197.... —

Q. '71 and '72.

A. '71 and '72 I was representing the church as a lawyer.

Q. Did Mr. Armstrong or the church have any independent counsel at the time of those transactions?

A. Not to my actual knowledge, but it is quite possible that they did.

MR. CHODOS: Move to strike the part about it is quite possible that they did.

THE COURT: Speculation, and it will go out.

Q. BY MR. CHODOS: Now, Mr. Rader, when you—in 1974, October of 1974, the property was conveyed by the church to you and Mrs. Rader, was it not, in exchange for your assuming a $218,000 liability on the existing loan and giving back a second of $145,000?

A. I do not believe that 1974 is correct, Mr. Chodos.

I said the property was conveyed on or about January 1972.

Q. All right. In any event, Mr. Rader, since the property was occupied by you in the first instance, it is true, is it not, that the church has paid all the payments for the mortgage, the maintenance, the furnishing having to do with that property?

A. Not true, Mr. Chodos.

Q. The church has paid the charges, haven't they?

A. In some years.

Q. And not in others?

A. That is correct.

Q. How did it come to pass that they paid in some years and not in others?

A. To—that will involve a theological explanation, which I would be happy to go through, Your Honor. It would take quite some time, and we would have to call Mr. Helge—

Q. Mr. Helge to give the theological explanation?

A. And the legal aspect of it.

Q. Are you a minister of this church?

A. No.

Q. You have been baptized into it in 1975?

A. That is correct.

Q. Mr. Rader, do you know how much money the church put into this property?

THE COURT: The house?

MR. CHODOS: The house.

MR. BROWNE: Objection. I don't understand. You mean at the original time of purchase?

Q. BY MR. CHODOS: No. Up until now, up until you sold it.

A. It was my understanding, Mr. Chodos, that any payment made to me or for my benefit will be reflected on the books and records of the institution.

THE COURT: If you don't know the answer, state you don't know.

THE WITNESS: I—well—I don't.

Q. BY MR. CHODOS: It is somewhere around $800,000, isn't it, Mr. Rader?

A. I wouldn't think so.

Q. $500,000?

MR. BROWNE: Objection, Your Honor. I think the question is asked and answered.

THE COURT: If the witness knows, he can so state.

THE WITNESS: I don't know.

Q. BY MR. CHODOS: Mr. Rader, in any event, you and Mrs. Rader sold this property in the summer of last year; did you not?

A. That's correct.

Q. And the sales price was $1,800,000?

A. That's correct.

Q. And you have kept that money, that didn't go to the church; isn't that right?

A. That is correct.

Q. Now, at any time, Mr. Rader, was there any independent advice to Mr. Armstrong or to the church concerning your ownership or sale of the house on Loma Vista that you know of?

A. I can't answer, because I don't know.

Q. All right. Now, in addition, Mr. Rader, the house has—the church has bought you a house in Tucson; is that correct?

A. I am using a home in Tucson that was purchased by the church; title is in my name.

Q How much did that house cost the church, Mr. Rader?

A Approximately $150,000.

Q The church paid for furnishing it, correct?

A It was bought furnished and a few items were added.

Q Mr. Rader, in addition to the house in Tucson, you and Mrs. Rader also own a house in Pasadena?

A That's correct.

Q That is the house you bought from the church; is that correct?

A That is correct.

Q You paid the church about $225,000 for that house a few months ago, correct?

A That is correct.

Q And the way you did that was you paid $75,000 cash, and gave the church back a deed of trust for about $150,000; is tha right?

A Initially, but 60 days later the one fifty-two was paid off.

Q Now, Mr. Rader, does the church—has the church paid for the cars that you drive?

A I am entitled to—

THE COURT: Listen to the question, Mr. Rader. Just listen to the question.

THE WITNESS: Well, I don't know. I would have to check my employment contract.

Q BY MR. CHODOS: Do you have an Aston Martin and Porsche?

A Those are mine.

Q Did the church pay for those?

A No.

Q Mr. Rader, I would like to go back to something that you mentioned a little while ago on the matter of your different roles that you play.

You have been, as I understand it, Mr. Rader, you and your law firm, Rader, Helge and Gerson, have been counsel for the church for many years; is that correct?

A The association of Rader and Cornwall and—excuse me. Rader and Helge and Gerson have represented the church and its related entities for a good many years, yes.

THE COURT: Mr. Rader—

THE WITNESS: It is an association; it is not a partnership. It is very important.

THE COURT: I think you will save us all some time and expedite this if the question is susceptible

to a yes or no, just answer yes or no. You need not repeat the whole question. All right?

THE WITNESS: Yes.

Q BY MR. CHODOS: Mr. Rader, in addition to that, you have been a member and founding member of the accounting firm of what is now known as Rader, Cornwall, Kessler and Palazzo; is that correct?

A Yes.

Q As I understand it, Mr. Rader, in addition to that, you organized an advertising agency called Worldwide Advertising, Inc., which acted as the advertising agency for all the church's media purchases, time purchases?

A Yes.

Q And in addition to that, Mr. Rader, you organized an entity known as Mid-Atlantic Leasing, or something like that, which purchased airplanes and leased them to the church, is that correct?

A Yes.

Q And let me ask you, Mr. Rader, in connection with any of these activities or services or supply of assistance to the church that you provided through these various entities, did the church have any independent counsel besides yourself or your firm?

MR. BROWNE: Objection, Your Honor. Irrelevant to the scope of these proceedings.

THE COURT: Overruled. You may answer the question.

THE WITNESS: May I ask Your Honor something? He is using the word independent. Does he mean independent of me or in addition to me? He is not being precise.

THE COURT: I assume he means by independent counsel, counsel other than your firm, which had no connection with your firm, is that correct?

MR. CHODOS: Yes.

MR. CHODOS: Yes.

THE WITNESS: Remember I have asked Your Honor to understand the difference. My firm is not a partnership.

THE COURT: Be that as it may, let's talk about the three people who were associated together.

Bearing in mind that is the context of the question, I think, what is your response?

MR. BROWNE: Objection, Your Honor. Can we have the time frame about this leasing company?

THE COURT: I don't think that is necessary, Counsel.

MR. BROWNE: I think it's 1967, Your Honor.

THE COURT: I don't think it matters.

MR. BROWNE: Ten or eleven years ago?

THE COURT: I indicated to you, Mr. Browne, I think some background is going to be necessary. The quicker we get to it, the quicker we will dispose of the issue now.

MR. BROWNE: May I inquire, Your Honor?

My problem is this. These transactions are brought up. Was Mr. Armstrong independently represented. Now without regard to that answer, I feel compelled to now demonstrate to Your Honor by way of rebuttal they were all fair transactions, that they were proper financially, because I know Mr. Chodos is going to argue just because of the so-called specter of undue influence that we have a problem. And I know that if he gets into those underlying transactions, we are

going to be here a long time. And I feel it's somewhat of an unfair disadvantage in that respect.

THE COURT: I want to assure both of you we are not going to be here for a long time, as I already indicated to you.

Mr. Chodos, you are going to have to move this along. I think you are getting into detail that is not going to assist the Court very much in particular with this ruling.

MR. CHODOS: I asked to have 20 minutes. If I don't spend it all on objections, I will be past it.

THE WITNESS: May I help, Your Honor, in one way?

THE COURT: Yes, sir.

THE WITNESS: I don't know whether Mr. Armstrong has consulted independent counsel. That is because Mr. Armstrong is inclined to consult independently of everybody with other people, and I never know with whom he's speaking at any one time.

THE COURT: Your answer is you don't know.

THE WITNESS: Yes.

Q BY MR. CHODOS: Mr. Rader, a few things about these financial matters.

It's my understanding somewhere in the—Let me ask you a foundation question.

We have in our moving papers, which you have read—

You have read them, haven't you?

A Not completely.

Q We have attached copies of a document—I think it's called the Pastor's Report, which is sort of a mimeographed or offset printed publication of the church.

A Yes.

Q And in those reports there are messages from you; correct?

A That's correct.

Q You are in fact the author of those?

A That's correct.

Q If something appears in the Pastor's Report over your name, that is your statement?

A That's correct.

Q Somewhere in those papers—I'll find it, if you need it—you say you severed all your connection with Worldwide Advertising; is that right?

A In 1975, that's correct.

Q. Is that when you became a full-time officer of the church?

A. And a member of the church.

Q. You don't have anything to do with it now?

A. Nothing.

Q. It's now all owned by Mr. Gerson?

A. Worldwide advertising?

Q. Yes.

A. Is owned by Mr. Cornwall.

Q. Mr. Gerson, what does he have to do with it?

A. Nothing.

Q. He's on the door there as counsel for Worldwide Advertising. Do you know anything about that?

A. Yes. He subleases space from Mr. Cornwall.

Q. Mr. Cornwall is the gentleman of Rader, Cornwall, Kessler and Palazzo? He's the Cornwall in that group?

A. By name, yes.

Q. Now I understand also, Mr. Rader, that sometime a while ago Worldwide Advertising was no longer

—stopped handling the advertising agency function for the church?

A. That's correct.

Q. The church agreed to pay them something like $375,000 for termination damages; is that right?

A. I don't know the details. I was not privy to the transaction. I don't know.

Q. You don't know anything about it?

A. I know something about it, but I never participated in the transaction.

Q. Mr. Rader, can you tell me, did you know that the executive payroll checkbook of the Worldwide Church of God was out at Worldwide Advertising, Inc.?

A. Yes.

Q. The executive payroll records?

A. Yes.

Q. And they were out there a week or so ago?

A. Yes.

Q. What were they doing there, Mr. Rader?

A. The executive payroll had been prepared for some time under the direction of Mr. Cornwall. And Mr. Cornwall at that itme was acting as a certified public accountant.

And Mr. Armstrong's instructions were that the executive payroll should be prepared in that manner. When Mr. Cornwall, as I understand it, retired from the public accounting field, he assigned the duties of preparing that—those payroll checks—which is a clerical function—to someone who had formerly been working under his direct supervision.

Q. Is Mr. Cornwall now an officer of the church?

A. No. Never was.

Q. Does he have any—is he employed by the church?

A. No.

Q. He has no connection with the church organization or college or foundation at all?

A. As I understand it, there is a contract between Mr. Cornwall and the church which had to do with this termination, and he may have rights under the contract for payment as some kind of consultant.

Q. Does he prepare the executive payroll now?

A. No.

I just stated the executive payroll has been prepared for some time by another man who formerly was Mr. Cornwall's employee when he was practicing as a public accountant.

Q. This employee is a—

A. You have to ask that of someone else.

Q. Now, Mr. Rader, on the matter of the leasing company—then we will be off of this by a quarter of 11:00—some years ago, you and others formed a firm of some kind, an entity, to buy an airplane and lease it to the church; is that right?

A. That's correct.

Q. And since that time, you and others have bought more than one plane and leased it to the church?

A. That is correct.

Q. And in fact, there is a plane the church is using now called a Grumman II, that was bought by you and leased to the church; is that correct?

A. Yes.

Q. All right. The church—the terms of the lease were such, were they not, Mr. Rader, in every instance, that if the lease had been fully paid, the lease payments would cover the full purchase cost and an interest

factor or service charge factor, in addition, for the lessor; is that right?

A. They were leases, and whatever the lease provisions would provide—

THE COURT: If you don't know, say you don't know.

THE WITNESS: I don't know.

Q. BY MR. CHODOS: They were at least finance, purchase-type contracts, weren't they?

In other words, the party paying the lease was, in effect, bearing the entire cost of the time purchase; isn't that right?

A. They were leases. They were leases. You would have to examine the documents if you want to say something else about them.

Q. Mr. Rader, do you not know whether the terms of the lease were such that the church's payments were intended to cover the full purchase price, plus a profit to the lessor for providing the financing; isn't that true?

A. It depends on which plane we are talking about.

Q. Well, let's talk about the Falcon.

A. Which Falcon?

Q. How many Falcons were there?

A. There were two.

Q. Let's talk about the first one.

Let's talk about the second one, the most recent Falcon. Isn't it true that the purchase payments were intended to cover the full purchase, the lease payments were sufficient to cover the full price plus?

A. On the second Falcon there were serious limitations on the amount that the lease would give in terms of the difference between the pay out of the lease and the amounts that the lessee would pay.

In other words, no one knew until the end whether such a figure would be paid.

THE COURT: You know what the plane cost, don't you?

THE WITNESS: Yes.

THE COURT: What did it cost?

THE WITNESS: Well, the plane upon the trade-in was about $2.3 million.

THE COURT: What were the lease payments totaled over the period of the lease?

THE WITNESS: They were to be a certain amount per month, but the interest rate was variable and could not exceed a certain amount to the purchaser.

THE COURT: What were the parameters of that?

THE WITNESS: Well—

THE COURT: The lowest and the highest in the form of the lease payments.

THE WITNESS: Well, I don't have the contract in front of me. I can't—

THE COURT: What is the equivalent, basically the purchase price of the plane?

THE WITNESS: Just about; just about.

Q. BY MR. CHODOS: Now, Mr. Rader, in fact, sometime in 1977, the church decided to terminate the Falcon lease; is that right?

A. Yes, in 1977.

Q. And under the provisions of the lease, who drew up that lease, your firm?

A. No.

Q. Ervin, Cohen and Jessup?

A. No.

Q. Who drew it up?

A. The lease was drawn by lawyers in the east, I understand.

Q. Penalty of $620,000 for early termination was paid in 1977, for the termination of that Falcon lease, isn't that right, to the lessor?

A. I'm not sure that that was the amount. I don't know whether it was a penalty, per se.

Q. I will get to that.

A. The lease was terminated, and it is a matter of record.

Q. I will get that to you in just a minute, Mr. Rader.

But while I am at it, the church then bought the Grumman II?

A. No.

Q. They have the Grumman II?

A. They bought the Grumman II in 1970.

Q. Now the church has made all the lease payments on the Grumman II, completed making all the lease payments last year sometime or before; isn't that right?

A. Yes.

Q. Has the title to the Grumman II ever been transferred to the church?

A. Yes.

Q. When did that happen?

A. I think sometime in 1978.

Q. How long after the payments were made?

A. Within the period of time necessary for all the closing documents to be gathered. Mr. Helge, I think, handled that.

* * *

Pages 216-226:

MR. CHODOS: Call Virginia Kineston to the stand.

THE CLERK: Do you wish to be sworn or affirmed?

THE WITNESS: Affirmed is fine.

VIRGINIA N. KINESTON,

called as a witness by the relators, affirmed and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: Virginia N. Kineston, K-i-n-e-s-t-o-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mrs. Kineston, you are Mr. Rader's secretary?

A. That's right.

Q. How long have you acted in that capacity?

A. One year and approximately two months.

Q. You are married to John Kineston, who is his administrative assistant and limousine chauffer?

A. That's correct.

Q. Now, Mrs. Kineston, you have filed two affidavits or declarations in this proceeding, have you not?

A. That's correct.

Q. And, Mrs. Kineston, just to review briefly for background, you were physically on the premises in the fourth floor suite of offices on the morning of Wednesday, January 3, when Judge Weisman first arrived?

A. Yes, I was.

Q. And it is correct, is it not, that someone came to the door at around 9 o'clock, or a few minutes after, and said they had a court order and wanted to come in and take some records?

A. I cannot remember that Mr. Chodos said he had a court order. He shoved a piece of paper in my face and told me that that gave him the authority to come in and confiscate our records.

I asked him if I could have time to call my attorney. He said no, he had to have the records first and then I could call my attorney.

And I told him I haven't read the paper yet and didn't know what it said. And he told me that it gave him the authority to come in and take the records.

And I told him I wasn't doing anything until I talked to my attorney.

Q. That gentleman was Mr. Rafael Chodos?

A. Yes.

Q. You called Mr. Rader first thing?

A. Yes.

Q. He told you not to do anything until the orders were examined by a lawyer?

A. Mr. Rader asked me who it was, and I said I don't know who the people are.

He said is he a private attorney, and I said yes.

And he said, well, we have to get counsel on it.

Q. You then locked the door?

A. No. The door was locked before that.

I opened the door and let him in. I shoved the door and locked it again. I told him I was not letting him in.

Q. Then you locked all the doors to that suite?

A. Correct.

Q. Then shortly afterwards, as your declaration indicates, the agents of the Department of Justice turned off the power to an elevator that runs—private elevator

that runs from that fourth floor suite to the ground floor?

A. Yes.

Q. And somebody was trying to go down that elevator with records?

A. They weren't records that belonged in our office. They had been delivered to us that very morning when our office was under siege, and I wanted them out. They didn't belong to the corporation. They belonged to a legal—you know, some attorneys, and they didn't belong to us.

He told us he was trying to confiscate our records, and I said get them out, they are not ours.

Q. They belonged to Rader, Helge and Gerson?

A. I assumed they were.

Q. That was the church legal office?

A. They are not part of our executive office, no.

Q. Now, Miss Kineston, ultimately the doors were not opened until around 3 o'clock in the afternoon; isn't that right?

A. Correct.

Q. And they were opened by a security man from the college named Mr. Sprouse?

A. Correct.

Q. At that time I came in, and Raphael Chodos came in and some other people came in?

A. A swarm of people came in.

Q. Yes. You have described it as like a Nazi swarm and so on?

A. Correct.

Q. And the first thing you did, Miss Kineston, was call Mr. Rader; isn't that right?

A. No. I did not call Mr. Rader. I called Mr. Helge.

Q. And what did you tell him?

A. I told him that they had broken into the office, that they were swarming all over the place, grabbing things up. They wouldn't give me an opportunity to go through the office with any kind of order whatsoever. They were running in and out of doors.

I was trying to get our secretaries to go with them and escort them to make sure they didn't confiscate things or stick things in their pockets or briefcases.

Q. Now, Miss Kineston, just a couple of other matters.

You learned at some point that there were allegations of paper shredding?

A. Yes, I did.

Q. And you filed a special supplemental declaration; did you not?

A. Yes, I did.

Q. On the Fifth day of January, 1979, for the hearing on Friday evening?

A. Correct.

Q. And what you explain in here is that you are responsible for running the day-to-day administrative matters of our office, and are generally in staff work for Mr. Rader, and at no time have you or any other person working in the office destroyed any document, book, financial record or other matter generated or belonging to the church, foundation or college; is that right?

A. That's probably—that is what I said. Anything that is original, no, I have never destroyed, ever.

Q. Well, let me read you paragraph 3:

"When we moved in the offices we found a small paper shredder, about the size of a waste-

paper basket, in one of the offices which previously had been occupied by an assistant to Garner Ted Armstrong."

A. Correct.

Q. Now, Miss Kineston—

A. It is Mrs. Kineston.

Q. Mrs. Kineston. Mrs. Kineston, have you used the shredder?

A. Of course.

Q. You have used the shredder?

A. Of course I have used the shredder. We get all kinds of weird mail in our office. We get pornography up there. I put it in the paper shredder.

Q. Did you use the shredder on the day that Judge Weisman was out there?

A. I did not.

Q. Did anybody in your office use the shredder on that day?

A. I cannot testify to what other people did. I did not use the shredder.

Q. Well, as a matter of fact, Mrs. Kineston, it is true, is it not, that this shredder was regularly used?

A. In—yes.

Q. In your offices, up to and including the day that Judge Weisman came up there?

A. Of course. I have never denied that.

Q. Well, is there any document that you destroyed in this shredder that you did not include within the following phrase? Let me read you the sentence again from your declaration.

"At no time have I or any other person working in this office destroyed any document, book,

financial record or other matter generated or belonging to the church, foundation or college."

A. May I explain something, Your Honor?

THE COURT: Go ahead.

THE WITNESS: Everything that we have in our office is a duplicate of something that has been generated somewhere else within the college or church confines. Every financial record that I have ever had in that office has usually been generated, sent to me by Mr. Bickett, who is the head of our data processing and accounting firm.

If I have shredded them, it is because we have no use for them. They are totally overwhelmed with files, memo type, in our office. I have never shredded anything that can't be duplicated immediately.

THE COURT: Have you ever thrown anything away without shredding it?

THE WITNESS: Constantly.

THE COURT: Why would you want to shred junk mail?

THE WITNESS: Because we have people that—you have to understand about the organization. We have people within our organization that are not particularly friendly to the organization, but they get the paycheck from them. They like to go through the mail when it comes out of the executive suite and pick up things, and thinking they have got some kind of confidential information.

Usually—I got a letter one day addressed to Mrs. Rader, homemaker, and when I opened it up the filth was incredible, pictures from Hustler magazine and stuff like this. Well, we don't read Hustler magazine.

So I put it in the paper shredder. I am not going to keep things like that in my file.

THE COURT: Anything further?

MR. CHODOS: One more thing.

Q. Do you have someone in your office whose initials are V. S.?

A. Yes, Valerie Searles.

Q. What does she do?

A. She is our file girl, and she is the general office girl for us.

Q. Mrs. Kineston, after we read your declaration, we had some of the shredded contents of your destroyed shredder reassembled.

A. Fine.

Q. And this is one of the papers. This is a copy of one of the reassembled documents.

A. Okay. I understand. I understand what this is about.

First of all, Judge Weisman's name—which she can testify to—this is Judge Weisman's name, was not on the message to begin with, and Mr. Kent McNeil, who called in during all of the confusion up there the day, you know, they were trying to come into the office, and for music of America, he is something. I don't know what it was Valerie said, "I said what does he want?" "I think he wants money."

You have to understand we have a foundation that supports certain, you know, charitable functions, whatever, sometimes crippled children, or whatever, and people will call in and ask us to send them a check in support, or whatever the thing is.

Then during the course of the day, for some reason, Valerie explained it to me, and at this moment I

can't remember the exact explanation. I am sure she can give it to you.

She wrote Judge Weisman's name down on the top of this. More crap is all it was. She was just being cute. You have to know Valerie to understand. She thought that was cute.

Q. I think it is cute too.

A. I do too.

Q. Mrs. Kineston, will you explain this exhibit 7—may I—

THE COURT: May I see it, please.

MR. CHODOS: It is a Xerox of a reconstructed shredded document. We have the original, Your Honor. I think we have even the reconstituted document. The Attorney General would like to keep the original.

Q. We will be through in just a minute, Mrs. Kineston.

We have another reconstituted document from the destroyed one, Mrs. Kineston, which is a copy of a message from Kent McNeil, without Judge Weisman's name on it.

Do you remember seeing that before?

A. I—you are going to have to call Miss Searles. She is the one that wrote the thing.

THE COURT: Do you recall ever seeing it before?

THE WITNESS: Yes, yes. That is the one I recall that has Judge Weisman's name on top of it. I don't recall seeing this one.

MR. CHODOS: This one I will mark exhibit 8.

Q. I want to point out to you not only Judge Weisman's name, it doesn't have the V.S. initials at the bottom.

A. That is not my handwriting.

Q. My question is, can you tell me, Mrs. Kineston, why two copies of a message which was ultimately intended or related to Judge Weisman should have been put in the shredder on Wednesday?

A. I didn't put them in the shredder, so I don't know.

* * *

Pages 229-241:

MR. CHODOS: Call John Kineston to the stand.

JOHN M. KINESTON,

called as a witness by the realtors, affirmed and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: John M. Kineston. J-o-h-n, M., K-i-n-e-s-t-o-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Kineston, you are Mr. Rader's chauffer and administrative assistant, are you not?

A. That would be a fair statement, I think.

Q. Mr. Kineston, is it correct that on Wednesday, the 3rd of January, sometime in the middle of the morning or toward noon you took a limousine to the transportation building and took a quantity of documents from the transportation building and put them in the limousine?

A. That is not true.

Q. Did you take any documents from their usual location, from the location where they were on Wednesday to transport them somewhere else?

A. I did not.

Q. You didn't take any documents?

A. I took no documents ever to—in my life have I taken any documents. I don't know what they are in a sense. I don't deal with documents.

Q. All right. And do you have any recollection, Mr. Kineston, of taking the limousine to the transportation building on Wednesday morning and then going from there to the airport at Burbank?

A. I have no recollection of that whatsoever.

Q. All right. Mr. Kineston, did you talk to Mr. Rader any time, say, between 9:00 and 10:30 on Wednesday morning?

A. 9:00 and 10:30?

THE COURT: I take it you are referring to last Wednesday?

MR. CHODOS: Wednesday, the 3rd, yes.

THE WITNESS: This is the day of the raid; is that correct?

Q. BY MR. CHODOS: The day Judge Weisman came out to Pasadena.

A. I did not see Judge Weisman that day.

I did not—I did not have anything to do with any Burbank business. This Burbank business—

As far as I know, I have no knowledge of going to Burbank whatsoever.

Q. That is what you told me a minute ago.

A. State the question again.

Q. Did you talk to Mr. Rader at any time between 9:00 and 10:30 on the morning of the day Judge Weisman showed up in Pasadena?

A. To my knowledge, I did not.

Q. All right. Now, Mr. Kineston, I want to direct your attention to Saturday night and Sunday, the 6th—

Let's talk about the period first from Friday night, the 5th, through Sunday night, the 7th.

A. You will have to guide me very carefully here. I don't recall everything I do hour by hour.

I have been rather busy the last week, so let's get it precise.

Q. I'll resist the temptation.

Mr. Kineston, at any time between Friday night, which is when the first court hearing was held before Judge Foster, you were there?

A. At the court hearing with Judge Foster on Friday night?

Q. That is when I served you with a subpoena.

A. Yes, you served me in a telephone booth outside the courtroom. Yes, that's correct.

Q. After you left the courthouse—that was an evening hearing—and after you left the courthouse and until Sunday night, did you have any occasion to enter or to go to the financial data processing building that the college maintains a couple of blocks north of the administration building?

Do you know the building I am talking about?

A. I will tell you it would have been absolutely impossible, because it was filled with guards.

I went near—before that I remember seeing a guard whom I assumed to be somebody, sort of a plainclothesman. And I—this is not on that day. This is on another day. So I had no reason to go there.

I haven't been anywhere near there since, as far as I know. I haven't been anywhere near the building.

Q. Let me see if I can get straight what you are telling me.

You are saying sometime before the court hearing, the evening hearing in Judge Foster's courtroom, you drove past the data processing building?

A. Sometime prior to that? Well, of course, that would be hundreds of times, of course, in my job.

I would say that I recollect it was prior to that that I remember seeing a guard posted out there. I believe that was on the day originally in question I recall that.

I don't think it's relevant, probably, but I had no reason to go there. I'm simply saying that—

THE COURT: Listen to the question, please, and just answer the question.

THE WITNESS: Yes, Your Honor.

MR. CHODOS: I'll try and get you off the stand in a minute.

THE WITNESS: I think the answer is no.

Q. BY MR. CHODOS: I would like to clarify it a little more.

For our purposes, Mr. Kineston, we can confine ourselves to the period after you learned that Judge Weisman was at the college and that he had security guards, and so on.

After that, but before Judge Foster's hearing, I understand you drove past the data processing facility and you observed that there were security guards there?

A. According to my own testimony that I'm now adding, yes, that's correct.

I did—I don't know there were security guards. I'll be honest about this. I saw a late model car parked out front. It could have been possibly yellow. I don't recall. I don't know who was in it, but it

seemed to me that the gates were closed, which is very unusual.

So I saw this. I saw this. It was long before the period in question. So I'm simply stating that I would have no reason to even think I could get into that building.

Q. Okay, Mr. Kineston. What I'm trying to get at—

A. During your period in question I most assuredly definitely never went near the building.

Q. After you made that observation, you are telling us you never went near that financial data processing building until today?

A. To the best of my knowledge, I can't—

Can't you tell me it's impossible to get into the building, wasn't it?

THE COURT: Now, now, listen to the question, please.

The answer is to your knowledge you never did?

THE WITNESS: Your Honor, I apologize. I have never been in court before.

THE COURT: Go ahead.

Q. BY MR. CHODOS: And you are telling us, Mr. Kineston, that you have never, since you heard Judge Weisman was on the premises—you have not taken or removed any records or anything to do with church records?

A. Absolutely correct. That is true.

MR. CHODOS: Nothing further.

THE COURT: Any questions?

MR. BROWNE: Nothing, Your Honor.

THE COURT: You may step down. Thank you.

MR. CHODOS: Call Mr. Roberson to the stand, Your Honor.

CHESTER ROBERSON,

called as a witness by the relators, affirmed and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: My name is Chester Roberson. C-h-e-s-t-e-r, R-o-b-e-r-s-o-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Roberson, are you a member of the church?

A. Yes.

Q. A baptized member?

A. Yes.

Q. Are you also an employee at the church?

A. Yes.

Q. How long have you been employed?

A. 25 years, not including one year I went to college and worked part time.

Q. And what is your job now?

A. At the present I'm a small engine mechanic and have been for the last four or five or perhaps six years. But before that I was a gardener.

Q. Gardener?

A. Right.

Q. And you worked at the college at the campus in Pasadena every day?

A. Yes.

Q. What building do you normally report to work?

A. It's called the transportation building. I work in the rear of it.

Q. Mr. Roberson, you have been in the courtroom the last few minutes and just heard Mr. Kineston testify?

A. Yes.

Q. Do you know Mr. Kineston?

A. Not personally, but I have seen him at least once a week and maybe more often in that building, up in the front of it, when I go to get coffee.

Q. All right. You know who he is and what he does?

A. Yes.

Q. What you mean about when you say you don't know him personally, you mean you are not friendly with him?

A. No. No. And I'm sorry. I don't know what he does. I didn't know that.

Q. All right. In any event—By the way, Mr. Roberson, you are here under subpoena, are you not?

A. Right.

Q. Mr. Roberson, were you at the transportation building on Wednesday, January 3, Wednesday, a week ago?

A. Yes.

Q. And did you see Mr. Kineston at the building on that date?

A. Yes, I did.

Q. About what time was that?

A. The best I can remember it was between 3:00 and 3:30. I went to get a cup of coffee on my coffee break.

Q. What did you observe Mr. Kineston was doing? What did you see him do?

A. When I first observed Mr. Kineston, he was coming from a parked automobile inside of the garage building with something in his hands. What, I don't know.

It was approximately this wide and that thick (indicating). It looked like books, record books, but I don't know what it was.

MR. BROWNE: Objection, Your Honor. I'm going to move to strike "It looked like record books."

He said, quote, I don't know what it was, right after that. And that is speculation.

THE COURT: Describe it. What did you see?

THE WITNESS: Your Honor, what I saw Mr. Kineston have in his hands at that time was about that thick (indicating).

THE COURT: About three inches thick?

THE WITNESS: Approximately.

THE COURT: All right.

THE WITNESS: About that wide (indicating).

THE COURT: About a foot wide.

THE WITNESS: And the same length (indicating).

THE COURT: All right.

Q. BY MR. CHODOS: Mr. Kineston, I am going to show you—I am sorry, I beg your pardon. Please forgive me.

I am going to show you some accounting ledgers that I have in my briefcase.

Were the objects you saw in Mr. Keniston's hands similar to these in any way?

MR. BROWNE: Objection, Your Honor. Now the witness has described what he said he thought he saw, and to lead him with these books—this is his witness. I don't think it is appropriate.

I would object that it is leading. He has described it to the best of his ability.

THE COURT: Overruled.

THE WITNESS: Yes, they did.

Q. BY MR. CHODOS: Now, tell us what happened next.

A. Next, I stepped out of the place I was in before this happened. I was getting a cup of coffee. Then I see a young lady in the stand over there hand Mr. Keniston something. I don't know, again, what it was. It looked like a transmittal envelope that at the place where I have used interoffice transmittal envelopes, and I then say Mr. Archie Hall also was handing something, and I didn't—I couldn't tell what that was.

Q. Now, you identified a lady—you pointed to a lady. You mean the lady here in the courtroom?

A. Yes. I see her. She is a secretary of the transportation department.

Q. April—is it April something?

A. April Cowan.

Q. April Cowan. All right.

Now, then what happened, Mr. Roberson?

A. Then Mr. Kineston handed whatever he had in his hands to a man named Bill—Bill Whitman, and asked him to place it in the Cadillac, that Mr. Kineston had to go to the bathroom. And then Mr. Whitman replied, "Yes, do you want me to fill it up with gas?" And Mr. Kineston says, "No, I'm afraid I will be seen on my way to Burbank. I will pick up gas."

Q. Then what happened?

A. That was the last—oh, yes. Mr. Whitman placed those—whatever it was—in the backseat of the Cadillac on the left side.

Q. Did you see the Cadillac leave?

A. No.

Q. Now, Mr. Roberson, I want to turn your attention to—well, the period after Judge Foster's hearing.

Were you in court at Judge Foster's hearing?

A. Was that Friday?

Q. Friday.

A. Yes, I was.

Q. Now, after that hearing was over, and later on, did you see Mr. Kineston again?

A. You mean on the campus?

Q. Yes, on the campus.

A. Yes, I did. Saturday night I saw him.

Q. All right. Where was he?

A. He was entering what is called the data processing building.

Q. All right. About what time was that Saturday night?

A. The best I can remember, 9 o'clock, in that area.

Q. How did you happen—what were you doing there?

A. I was driving around with another fellow that is in court.

Q. What is his name?

A. Mr. Morgan.

Q. All right. And you were driving around the campus area?

A. Yes.

Q. You are familiar—you know the data processing building and where it is?

A. I know where it is located. I don't know inside.

Q. Now, you say you saw Mr. Kineston near the data processing building?

A. Yes.

Q. Would you tell us what happened.

A. First, Mr. Morgan and I saw four people—no, five people, including what looked like a guard, standing by a car, and they had a flashlight over a hood of this car, and at that time I didn't know who they were. And then we went around the block and came back again, and by that time, four of these men were up at the building itself, the data processing center building off of Pasadena Avenue.

Q. By the way, this guard—there have been references to guards.

Have you observed—strike that.

The college does maintain a security force, does it not?

A. Yes.

Q. And they wear uniforms regularly?

A. Yes, they do.

Q. And they have college security guards?

A. Yes.

Q. All right. Now, in addition to that, since Thursday there have been some security guards employed by Judge Weisman; are you aware of that?

A. I didn't know who employed them. I have seen guards there.

Q. Well, in other words, you have seen uniformed security people that are not college people?

A. Right.

Q. Now, coming back—having that distinction in mind, Mr. Roberson, coming back to Satuday night at 9 o'clock, your first observation.

Was the guard that you saw a college security guard or a different security guard?

A. This guard I saw was dressed as college security guards do, and he also—or someone did—I don't know who—had a college security car parked in the street in front of this building with the lights on.

Q. Now, coming back to your second time around the block.

You say there were four people at the door of the building?

A. Right.

Q. Would you go on and tell us what you saw there?

A. Mr. Kineston was one of the men, and Mr. Bill Whitman was one of the others; another man was a bearded man I did not recognize. The other man was the guard.

Q. What were they doing?

A. They were—we stopped the truck and watched, and they were entering the building.

Q. Did you see them go in?

A. Yes.

Q. Did you—what did you do then?

A. We told the Pasadena police, found a car parked in front of the hall of administration, and reported it to them.

Q. Did you see Mr. Kineston anymore that night?

A. No, I did not.

Q. Now, Mr. Roberson, did you observe any other instances, besides the two you have told us about, of people entering places or handling records or entering places where records were, since Wednesday?

A. No, I have not.

* * *

Pages 258-260:

MR. CHODOS: I would like to call Mr. Morgan to the stand, Your Honor.

THE COURT: Mr. Morgan.

MR. CHODOS: David Morgan.

THE COURT: David Morgan.

DAVID R. MORGAN,

called as a witness by the relators, affirmed and testified as follows:

THE CLERK: Please be seated and state and spell your name for the record.

THE WITNESS: My name is David R. Morgan, D-a-v-i-d, R., M-o-r-g-a-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Morgan, you are one of the relators in this lawsuit; are you not?

A. Yes, sir.

Q. And you have filed a declaration in support of the original application for a restraining order and receiver, correct?

A. Yes, sir.

Q. All right. I don't want to discuss those matters with you now, Mr. Morgan. I want to talk only about the events of Saturday night.

Were you in Mr. Roberson's company on Saturday night?

A. Yes, I was.

Q. And were you driving around with him?

A. Yes, sir.

Q. Did you see Mr. Kineston on Saturday night?

A. Yes, I did.

Q. Would you tell the court what you observed of Mr. Kineston on Saturday night?

A. We were driving around the campus, Mr. Roberson and I. We have been long-time friends. And we drove by the data processing center.

We observed a college security car parked there, and there was men inside by another car.

Now, I didn't—I don't know what they were doing there, but they were there. And we went around the block and we come back around the block. We saw them at the door, at the data processing.

And Mr. Roberson was driving. He stopped, and I observed a security guard standing in the door, and I observed Mr. Whitman with a flashlight, and I observed Mr. Kineston, and there was also another party with a beard, but he was in the shadows, you know, the dark. I couldn't—I don't know who it was.

And when we saw this. Mr. Roberson stopped immediately, and when we stopped, Mr. Kineston turned and there was no mistaking it. He must have a twin brother if he says he isn't there, because this party looked identical to him, as far as I could see.

So then Mr.—I told Mr. Roberson, I said, "Them doors is supposed to be locked. It is supposed to be under the—the state is supposed to have control of these buildings."

And we knew there was a police officer in front of the hall of administration that we—because we observed him there.

So we immediately went over there and told the police officers that somebody was trying to get into the building.

* * *

Pages 262-266:

PAUL TULLENERS,

called as a witness by the relators, was sworn and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: Paul Tulleners, T-u-l-l-e-n-e-r-s, P-a-u-l.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Tulleners, what is your occupation?

A. I'm a peace officer for fourteen years, the last five and a half for the State Attorney General's office as a special agent.

Q. Officer Tulleners, you have handed me a box of material here.

Can you tell me what this is?

A. Appears to be shredded paper to me.

Q. Where did you get it?

A. Out of that waste basket sitting on the counsel table to your left, an electric waste basket combination shredder.

Q. Who gave you the electric waste basket?

A. Given to me by a State policeman on Monday, the 8th of January.

Q. You took the shreds out of this waste basket?

A. Yes, sir, I did.

Q. Did you make any attempt to piece together the shreds that you located in the waste basket?

A. I did.

Q. I take it you weren't able to piece all the shreds together?

A. I made no attempt on the rest of the material that is in that one box.

I believe it's possible, but I think it would consume a considerable amount of time.

Q. I'm going to show you, as soon as counsel is through looking at them, some collections of shredded paper.

THE COURT: Do you anticipate you will need Judge Weisman?

MR. BROWNE: I don't plan on calling him, Your Honor.

THE COURT: Today?

MR. CHODOS: Ultimately I think we will need him, but whether it's today or not, I don't know.

THE COURT: All right. Let's proceed.

MR. BROWNE: I'll stipulate this can come into evidence.

Will that save you some time?

MR. CHODOS: No, Your Honor. The Attorney General may want to keep the originals.

MR. BROWNE: We will stipulate copies may be introduced in evidence.

THE COURT: All right.

MR. CHODOS: I'll put copies in evidence in just a moment.

Mr. Tulleners, I take it this folder of documents was made up by you; is that correct?

A. That's correct.

Q. In essence you have taken the shreds and attached them with Scotch Tape to sheets of paper?

A. After piecing them together, I taped them into the shape shown here.

Q. You laid these each little items on a Xerox machine to take a picture of what you put together?

A. That's correct.

Q. We have here, Mr. Tulleners, about a dozen of these documents.

Can you tell the court about how long it took you to do this?

A. That represents about seven or eight hours' work on Tuesday of this week.

Q. You also dusted the shredder for prints, did you?

A. On Monday evening, yes, sir, I did.

Q. You are now in the process of trying to identify them?

A. Yes.

Q. About how long do you figure it will take to do that?

A. If it's possible, a couple of weeks.

Q. Now, Officer, did you go to the data processing building on Saturday night?

A. Yes, sir, I did.

Q. And did you have occasion to take a look at the roof of the data processing building?

A. Yes, I did.

Q. What did you observe there?

A. Well, I entered the roof from within the data processing center, specifically an area identified on the doors as Spanish department or Spanish language department.

And within that area there was a kind of a maintenance area for equipment, like air conditioning, things like that.

Then I saw a ladder bolted to one wall, a steel ladder.

I climbed that ladder and found there was a hatch to the roof, and the hatch was not secured.

I then went up and looked through that and saw the higher roofline of the shipping department to the east. And as I determined that there was a possibility to gain access to the data processing through that hatch, I pulled the hatch down and padlocked it shut from inside.

Q. About what time was this, Officer?

A. I would be guessing. Sometime between 9:30 in the evening and 11:00 p.m. on the 6th, Saturday, the 6th of January.

MR. CHODOS: Nothing further.

THE COURT: Any questions?

MR. BROWNE: None.

THE COURT: You may step down. Thank you.

* * *

Pages 366-367:

MR. CHODOS: I would like to talk about that.

I want to show Your Honor and remind Your Honor of some of the things that have happened just before you in the last couple of days. And if you will be patient with me for a few minutes, I'll explain the relevance to your inquiry.

I won't dwell on Mrs. Kineston's testimony, which was throughly impeached. I won't dwell on the fact she told you in a declaration that there had never been any shredding, and when she got on the stand and knew we had her nailed, she did a 180 degree turn, like an Olympic swimmer, without missing a beat.

I won't dwell on Mr. Kineston, who was thoroughly impeached. I want to talk about something more significant.

You now have before you, Your Honor, not one, not two, but you have three different versions of the by-laws of this church. It's the most extraordinary thing I have encountered in all my years of litigation.

On Friday night, Your Honor, Mr. Browne introduced a version of the constitution and by-laws which is a Xeroxed copy, and that is exhibit C.

In that document, your Honor, if you will examine it you will find that in article 3, section 3, before Xeroxing someone has typed up a new clause about this—

THE COURT: I have looked them over.

MR. CHODOS: Let me pursue it a little bit because, Your Honor, we now have this morning the declaration of Ralph Helge telling Your Honor about the true condition of the by-laws. And lo and behold, since Friday night, we have a new clause which just by coincidence is article 12 and relates to indemnification of officers and directors.

And the reason that is significant is Mr. Browne told you here the other day that before Mr. Rader's contract was introduced into evidence that he was entitled to take his fees out of the church because

Mr. Rader had a contract that entitled him to indemnification. But when the contract comes in, it turns out the indemnification clause doesn't cover this kind of lawsuit.

Between Friday and today we have a new indemnification article all of a sudden pasted in that now purports to provide indemnification for this lawsuit, too, and it's as though the president were to sneak into the Library of Congress—

THE COURT: Excuse me. You are really addressing yourself to the question of whether a receiver should be appointed, why a receiver should be appointed.

I have asked you to respond to another issue, and that is the issue solely as to whether or not there is any need immediately for the receiver to be given possession of all the property rather than the right and power to monitor and supervise with the condition of the right to later apply for possession.

APPENDIX C.

Declaration of Lauren R. Brainard.

I, Lauren R. Brainard, declare:

1. I am an attorney at law duly licensed to practice in the State of California. I am a Deputy Attorney General in the offices of George Deukmejian, Attorney General of the State of California, located at 3580 Wilshire Boulevard, Suite 500, Los Angeles, California 90010. If called upon to testify, I would and could competently state as follows:

1. On May 7, 1979, upon motion of the plaintiff the People of the State of California for order compelling Stanley R. Rader to answer questions propounded at deposition and for other relief, Judge Thomas T. Johnson, sitting in Department 80 of this court, ordered that the deposition of Stanley R. Rader recommence on May 29, 1979 at 10:00 a.m. in the offices of the Attorney General. A copy of the reporter's transcript of said proceeding of May 7, 1979 is attached hereto, marked Exhibit "A," and incorporated herein by this reference. Notice of said ruling was given by the plaintiff, the original of which is in the court file.

2. At or about 4:00 p.m. on Wednesday, May 23, 1979 I received in our offices a copy of a Petition for Writ of Prohibition and/or Mandate and/or Other Appropriate Extraordinary Relief; Request for Immediate Temporary Stay, etc. addressed to the Court of Appeal, Second Appellate District. (2nd Civil No. 56345). The petition sought to stay Mr. Rader's deposition scheduled for May 29, 1979. The Petition is voluminous and therefore I have not attached it to this declaration, noting that the court was served with

a copy thereof. It is incorporated therein by this reference as if fully setforth.

3. At approximately 2:00 p.m. on Friday, May 25, 1979 I delivered a short response to said Petition to the Clerk of the Court of Appeals. A copy of that response is attached hereto, marked Exhibit "B" and incorporated herein by this reference.

4. At approximately 2:30 p.m. on Friday, May 25, 1979 Allan Browne, Attorney for the bulk of the defendants and specifically for Stanley R. Rader, telephoned the undersigned. He informed me that Mr. Rader would not appear for his deposition on Tuesday, May 29, 1979, pending ruling by the Court of Appeals on said Petition.

5. At approximately 3:00 p.m. on Friday, May 25, 1979 I received a telephone call from the Clerk of the Court of Appeals. He informed me that the said Petition had been denied. A copy of the order denying said petition is attached hereto, marked Exhibit "C" and incorporated herein by this reference.

6. At approximately 3:15 p.m. on Friday, May 25, 1979 I telephoned Allan Browne. He informed me that Mr. Rader, regardless of the Court of Appeals' decision, was not going to appear for his deposition until the issues raised in said petition were resolved by higher courts. He also informed me that Mr. Rader would not, even if he appeared for the deposition, answer any question but rather would invoke the right against self-incrimination as to each and every question propounded to him. I informed Mr. Browne that the order requiring the attendance of Mr. Rader at this deposition at 10:00 a.m. on May 29, 1979 had not been stayed and that I would seek a contempt order

against Mr. Rader if he did not appear at the pointed time and place for the taking of his deposition.

7. Stanley R. Rader, failed to appear for said deposition on May 29, 1979. Further, no attorney for Mr. Rader appeared for that proceeding.

Executed this 1st day of June 1979 at Los Angeles, California. I declare under penalty of perjury that the foregoing is true and correct.

DATED: June 1, 1979.

GEORGE DEUKMEJIAN, Attorney General
JAMES M. CORDI
WILLIAM S. ABBEY
LAUREN R. BRAINARD
Deputy Attorneys General

/s/ By Lauren R. Brainard

LAUREN R. BRAINARD
Deputy Attorney General
Attorneys for Plaintiff

APPENDIX D.

Withdrawal of Exceptions to Individual Sureties.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, v. Worldwide Church of God, Inc., a California Non-profit Corporation, et al., Defendants. No. C 267-607.

TO EACH PARTY AND TO THE ATTORNEY OF RECORD FOR EACH PARTY IN THESE PROCEEDINGS:

WHEREAS, of the approximately 899 individual sureties filed in these proceedings to stay the order appointing Receiver of March 16, 1979 totalling $3,205,658, those representing $1,766,109 completely failed to conform with the statutory requirements of Code of Civil Procedure section 1057, plaintiff filed its Notice of Exceptions to Individual Sureties. Included were undertakings which are blank as to the description of the property relied on ($270,612), undertakings containing as a description thereof "personal property" ($128,111), undertakings denominating the property relied on as "cash" ($146,630), undertakings containing inadequate descriptions of real property such as "real estate" ($334,046), undertakings containing inadequate description of bank or savings and loan accounts such as "savings" ($198,593), undertakings containing inadequate descriptions of personal property such as "car" ($521,087), etc.

WHEREAS, during previous proceedings the court has stated that defendants would be given the opportunity to correct any such deficiencies in said undertakings to the extent they are found to be inadequate or insufficient:

PLEASE TAKE NOTICE that plaintiff hereby withdraws its exceptions to individual sureties filed by defendants for purposes of attempting to stay this court's order of March 16, 1979 entitled Order Appointing Receiver Pendente Lite; Injunction Pendente Lite. This Withdrawal of Exceptions is not an admission of the adequacy or sufficiency of said undertakings but rather is done in the interest of saving the parties, counsel and the court from wasting time and engaging in idle acts.

DATED: May 25, 1979.

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IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1720

WORLDWIDE CHURCH OF GOD, INC., *et al.*,

Petitioners,

vs.

THE STATE OF CALIFORNIA,

Respondent.

Petitioners' Reply Brief in Support of Petition for Writ of Certiorari.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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Introductory Statement.

The State of California's Opposition to the Petition is primarily devoted to obscuring or avoiding the major constitutional issues raised by the State's attempted domination of the Worldwide Church of God. Moreover, the Opposition is filled with incorrect or misleading statements of fact. In particular, the State Attorney General's reiteration on information and belief of misconduct charges which have already been proven false is unfair and unjustified. In truth, the Attorney General knows there has been and is no misappropriation of Church assets warranting the State's massive intervention into Church affairs. In truth, the State has inflicted

and continues to inflict grievous injury on the Church and is determined either to control the Church or destroy it. The State is presently achieving both ends in its courts.

In this Reply, we shall focus on the following issues:

1. The constitutional issues presented are ripe for review by this Court and the finality rule is fully satisfied. The State has asserted unlimited jurisdiction over the Church, and has inflicted and continues to inflict irreparable injury. This is not the first case in which the State has so acted; but if relief is not forthcoming in this case it is unlikely any other religious organization will be able to resist such unconstitutional conduct. The highest state courts have endorsed the State's gross violations of Petitioners' rights under the First Amendment. Nothing remains but the complete destruction of the Church.

2. The true nature of this action involves the exercise by the State of a general supervisory power over the affairs of religious organizations in California. Incredibly, in the State's view this power comprehends rights to inspect at will all Church documents and records, to determine whether Church expenditures are for proper religious purposes, to remove Church leaders from positions of effective authority, and to restructure the form of Church governance. There is no compelling state interest warranting such a wholesale invasion of Petitioners' First Amendment rights. This Court's decisions mandate termination of the State takeover of the Worldwide Church of God.

I

THE CONSTITUTIONAL ISSUES ARE PROPERLY BEFORE THIS COURT AFTER DENIAL OF ANY RELIEF BY THE STATE'S HIGHEST COURTS. THE FINALITY RULE IS SATISFIED ON BOTH TECHNICAL GROUNDS AND MORE PRAGMATIC GROUNDS APPLICABLE WHERE A REFUSAL TO REVIEW THREATENS IRREPARABLE INJURY TO FUNDAMENTAL CONSTITUTIONAL RIGHTS.

A. The State Misconceives the Issues and Facts.

The State of California would have this Court believe that with the stay of the second receivership imposed on the Church all immediacy for review disappeared.[1] This, of course, ignores the basic fact that the California courts have fully and finally upheld the State's assertion of jurisdiction over the Church and endorsed the State's right to impose a receivership in furtherance of its purported general supervisory power over the affairs of religious organizations. How the State exercises this jurisdiction is only a secondary question because however it does so religious freedoms suffer. If the State, by arbitrarily labelling the Church a "charitable trust," may at its whim (1) compel the Church to throw open its books and records and account for all income and expenditures, (2) decide whether Church assets are being used for proper religious purposes, (3) replace Church leadership because their views of "God's work" differ from the State's or because they resist submission to the State or because their religious beliefs dictate a form of religious polity contrary to the State's preference, then the State's use of a receiver to accomplish

[1]Similarly, the State would have this Court believe that the receivership was reimposed as a result of repudiation of some assurance. In fact, Petitioners made no assurances with respect to the injunction entered by the court. (R.T. March 1, p. 5.)

these goals would hardly matter. The State misunderstands the nature of the case if it believes Petitioners object only to the manner in which the State pursues its infringement of religious liberty. On the contrary, Petitioners challenge the very premise that the State has a general supervisory power over the affairs of religious organizations.

The State's Opposition totally ignores the following undisputed facts:

a. This action has already cost the Church more than $5 million in losses directly resulting from the receivership, vital Church programs have been crippled, and the mere existence of the receivership order and this lawsuit have a continuing and severe adverse impact on the Church. For example, the Church has been unable to pledge collateral and borrow money in the normal course of business, its credit rating remains impaired so that it is forced to deal on a cash-and-carry basis with the media, and other aspects of its operation vital to its religious mission are impaired. (See Declaration of Willis J. Bicket, Appendix C to Petition for Certiorari.)

b. The Attorney General's savage assault on the Church and his efforts to force disclosure of all Church records and information, originally commenced through the receiver, continue unabated in discovery. For example, the State has noticed the depositions of most of the individual Petitioners, served them with sweeping notices to produce documents, and is now seeking a contempt citation and incarceration against Petitioner Stanley Rader based on his failure to comply with their

discovery demands.[2] In addition, the State has now identified some 819 illicitly obtained Church documents in its possession, including the most sensitive religious material, *e.g.*, letters to the ministry, membership mailing lists, attorney-client communications, and donation statements.

c. In all of these continuing destructive proceedings, the underlying First Amendment issues remain identical with those now before the Court. In view of the continuing injury to the Church and the destruction of the First Amendment rights of all Petitioners the only question is whether there shall be judicial review now or judicial autopsy later.

B. The Matter Is Final and Ripe for Review.

There is "[n]o self-enforcing formula defining when a judgment is 'final' " for purposes of review by this Court. (*Republic Gas Co. v. Oklahoma,* 334 U.S. 62, 67 (1947).) "This Court has been inclined to follow a 'pragmatic approach' to the question of finality." (*Bradley v. Richmond School Board,* 416 U.S. 697, 722, n. 28 (1974); *Cohen v. Beneficial Loan*

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[2]The State's assertion at page 24 of its brief that Mr. Rader has invoked the Fifth Amendment right against self-incrimination is false. The true facts are that the Attorney General read a *Miranda* warning to Mr. Rader, advising him of his right to remain silent, and Mr. Rader elected to do so. (Transcript of Deposition, April 3-4, 1979, pp. 97-100.) The Attorney General then sought and obtained an order compelling Mr. Rader to resume his deposition and should he wish to assert the Fifth Amendment, to do so on a question-by-question basis. Mr. Rader declined to resume his deposition or to assert the Fifth Amendment because, among other reasons, were he to do so he could be barred under California law from testifying at trial on behalf of the Church. (See *A & M Records, Inc. v. Heilman,* 75 Cal.App.3d 554, 142 Cal.Rptr. 390 (1977).)

Corp., 337 U.S. 541, 546 (1948); see *North Dakota Pharmacy Bd. v. Snyder's Stores*, 414 U.S. 156, 160-164 (1973).) To employ a mechanical test of finality as urged by the State would be to forsake the intensely practical approach adopted by this Court. (See *Mathews v. Eldridge*, 424 U.S. 319, 331, n. 11 (1976).)

A final decision "does not necessarily mean the last order possible to be made in a case." (*Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152 (1964); *Bradley v. Richmond School Board, supra*, 416 U.S. 696, 722, n. 28.) Nor is a judgment by the highest court of a state any less final because rendered in an original proceeding, *Hartman v. Greenhow*, 102 U.S. 672, 676 (1881), or upon application for extraordinary relief (*ibid.*) [mandamus]; *Madruga v. Superior Court*, 346 U.S. 556 (1954) [prohibition]; *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947) [same]; *Michigan Central R. Co. v. Mix*, 278 U.S. 492 (1929) [same]. Petitioners have sought and been denied relief by the highest court of California; the requirements of finality have been met.

While Petitioners believe that technical standards of finality are thus satisfied in this case, there can be no reasonable doubt of finality when reference is made to the "core principle" of that rule: "[*S*]*tatutorily created finality requirements should*, if possible, *be construed so as not to cause* crucial collateral claims to be lost and potentially *irreparable injuries to be suffered. . . .*" [*Mathews v. Eldridge, supra*, 424 U.S. 319, 331, n. 11; (emphasis added.) (See *Republic Gas Co. v. Oklahoma, supra*, 334 U.S. 62, 68 ["T]he court has entertained an appeal . . . because the controversy had proceeded to a point where a losing

party would be irreparably injured if review were unavailing."][3] The State has already successfully asserted its authority over the Church. The devastation wrought by the State continues. If no relief is forthcoming now the overreaching pressure of the State may result in victory by attrition where there could be no victory by law.

The very cost of defending this grossly unconstitutional action threatens the right of religious freedom. (See *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965); *Time, Inc. v. McLaney*, 406 F.2d 565, 566 (5th Cir. 1969).) Indeed, it now plainly appears that the State has previously overborne the will of other religious organizations, successfully asserting a general supervisory power over their affairs.[4]

On technical and pragmatic grounds, therefore, this case is properly before the Court. (See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 483 (1975); *Construction Laborers v. Curry, supra*, 371 U.S. 542, 548-551; *Republic Gas Co. v. Oklahoma, supra*, 334 U.S. 62, 68; *Nebraska Press Assn. v. Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, J., in chambers); also, *New York v. Cathedral Academy*, 434 U.S. 125, 128, n. 4 (1977); *National Socialist Party v. Skokie*,

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[3]This Court is entitled to look to the whole record in determining questions of finality. (*Construction Laborers v. Curry*, 371 U.S. 542, 551 (1963); *Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379, 382 (1953).)

[4]Petitioners have recently learned of a letter from the State Attorney General to California State Assemblyman Ivers, dated January 31, 1979, in which it is stated "There are, of course, other cases in which this office has involved itself in the supervision of assets held by religious corporations, many of which were resolved short of trial and appeal."

432 U.S. 43 (1977); *Abney v. United States*, 431 U.S. 651, 657-660 (1977).)[5]

II

THE STATE IS IN FACT ASSERTING A GENERAL SUPERVISORY POWER OVER THE AFFAIRS OF CHURCHES. THERE IS NO LEGAL JUSTIFICATION FOR THIS WHOLESALE INVASION OF FIRST AMENDMENT RIGHTS.

A. The Facts Show the State Is Seeking to Establish and Exercise Unlimited Supervision of the Affairs of the Church.

The State is justifiably reluctant to admit the nature of its assault on the Church. The action is described at one point as designed to protect the Church from fraudulent misappropriation (Opposition, p. 2), at another as an effort to enforce corporation laws (Opposition, p. 15), and at a third as an instance of State supervision of "charitable trusts." (Opposition, pp. 16-20.)

The record shows that it is really the last of these bases on which the State acts. From the outset the

[5]The State's undifferentiated appeal to the doctrine of abstention is completely out of place in this proceeding. The *Younger v. Harris*, 401 U.S. 37 (1971) type of abstention described by the State is fundamentally inapplicable since this Petition arises out of proceedings in the state courts, not from a federal suit intruding on an action under way in a state court. (See *Colorado River Water Cons. Dist. v. United States*, 424 U.S. 800, 816-817 (1976).) Accordingly, although there is abundant evidence that the State is not proceeding in good faith, Petitioners decline the State's invitation to pursue this collateral abstention issue.

Nor are any of the other branches of the abstention doctrine relevant. (See, generally, 17 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure*, §4241, p. 429 *et seq.*) (1978). The State's abstention argument emanates from either confusion or obscurantism. In either case it cannot alter the fact that the federal constitutional questions raised by the State's wholesale intervention into religion are properly before this Court.

State argued that the property of the Church "always and ultimately rests in the Court's custody", that the Church was "always and ultimately subject to the supervision of the Court. . . . In effect, there are no private interests." (R.T. Jan. 2, p. 3.) These consequences follow simply from the State's reasoning that members' tithes or other contributions to a religious organization are *ipso facto* charitable and the organization therefore holds its assets in "public or charitable trust."

If events to date did not already amply testify to the breadth of the power asserted by the State, reference to the First Amended Complaint (Opposition, Appendix A) would:

1. The State asserts that the Church and its related organizations hold their assets *"subject to supervision by the Attorney General"* and by the state courts, that none of the Petitioners has any proprietary interest in the assets of the Church "nor in their books and records," and that the Church is "required by law to account to the public and this Court for all funds received, expended or held by [it]. . . ." (Paras. 10, 11.) (Emphasis added.)

2. The State asserts that efforts by individual Petitioners to protect the Church's books and records against intrusion by the State constitutes a basis for removing them from Church office. (Paras. 18, 20.)

3. The State seeks cancellation of contracts between the Church and individual Petitioners. (Para. 21.)

4. The State requests that individual Petitioners "should be perpetually enjoined and restrained from serving as officers or directors" of the Church. (Para. 22.)

5. The State requests that the form of Church governance be changed by court decree. (Paras. 24, 25.)

6. The State seeks an order requiring that the proceeds from the sale of the College's Big Sandy, Texas campus be used exclusively for charitable and educational purposes, thereby presumably excluding use of said funds for religious purposes. (Para. 31.)[6]

The same sweeping claim of authority appears in the Attorney General's brief to this Court (for example, see Opposition, p. 2, Para. 2, and pp. 16-20).

If, as the Attorney General erroneously believes, California Corporations Code section 9505 or the broader common law theory relating to charitable trusts applies to religious organizations merely because they are supported by members' donations, the State would need no charges of misappropriation to demand that Church records be submitted for inspection, or to pass on whether Church expenditures are for proper religious purposes, or to do anything else, including assuming operation of the Church, in furtherance of its supervi-

[6]In a document filed in the trial court entitled Plaintiff's Opposition to Application for Leave to Intervene by Ad Hoc Committee, page 8, the State asserts that ". . . church funds must be used exclusively for the religious purposes of the Worldwide Church of God, Inc.; college funds must be used exclusively for the educational purposes of Ambassador College, Inc.; and foundation funds must be used exclusively for the cultural purposes of Ambassador International Cultural Foundation, Inc."

Inasmuch as the Church is virtually the sole source of financial support of the College (whose students are educated for the ministry) and the principal support of the Foundation (which serves to introduce the Church to the general public through its good works [based on the biblical directive "Let your light to shine before man, that they may see your good works, and glorify your Father which is in heaven." Matthew 5:16]), the State's declared objective in this case would destroy the College and the Foundation and strip the Church of two of the principal institutions through which it accomplishes its religious mission.

sory power.[7] And, indeed, when the State's specific charges of wrongdoing were quickly refuted by the facts[8] the "charitable trust" doctrine substituted for evidence of wrongdoing.[9] While the State continues to repeat already discredited charges, and occasionally attempts to exalt additional innuendo into justification for its actions,[10] the simple fact remains that the

[7]In the Attorney General's letter to Assemblyman Ivers he put the matter thus: "In the eyes of the law, each [Church, College and Foundation] is deemed to be a charitable organization, holding its assets in trust for the public good. [¶] In recognition of the public interest in charities, it has been consistently held by the courts that the state, [*sic*] has the duty and obligation to oversee the handling of their assets."

[8]We remind the Court that at the original *ex parte* proceeding on January 2, the Attorney General alleged massive liquidation of Church properties below value and destruction of Church records. When these two matters were subsequently heard, the trial court found that neither accusation was supported by the evidence (R.T. Jan. 10-12, pp. 385-386 ["I don't believe from the state of the evidence that the plaintiff has made any real showing of any substance that properties have been sold below market value. The declarations which were filed by the plaintiff in this regard have indulged in sheer speculation, conclusion and hearsay regarding the sales, and those are contrary to the specific declarations of the defendants. . . ."]; R.T. Feb. 21, pp. 135-136 ["If there is some demonstration that those records have been fooled around with, I haven't heard it yet."].)

[9]The trial court confirmed the receivership for the erroneous reason that "perhaps a trier of fact in the future . . . will determine that there is some possibility of truth to these charges, ..." (R.T. Jan. 10-12, p. 385).

[10]The State is fond of adding "color" to the facts by lending sinister connotations to certain transactions involving Petitioner Rader and the Church (Opposition, p. 4). The State refrains from explaining that the transactions took place over many years, both before and after Mr. Rader joined the Church as an officer or member, that these transactions were entirely unrelated to the subject of the receivership, that the very limited testimony regarding them before the court was admitted only as "background" (R.T. Jan. 10-12, p. 153), and that when Petitioners' counsel advised the court he felt compelled to demonstrate the true complete facts regarding the transactions he was cut off by the court (R.T. Jan. 10-12, pp. 162-163, 199-203).

action is one to bend the Church into submission. If it will not bend, it must break.[11]

It is as absurd to describe the court-imposed receivership of the Church as "a very limited receivership" as it is disingenuous to seek to justify it as a means of "safeguarding financial records and preventing any continuing misappropriation of funds." (Opposition, pp. 5-6.)[12] The State's basic premise is that it has a general supervisory power over the affairs of religious organizations, and on this premise it needs no reason whatsoever to inspect Church documents, pass on the propriety of expenditures, etc. By the simple device of labelling the Church a "public or charitable trust" the State has accomplished what for two hundred years has been forbidden by the First Amendment—the merger of Church and State.

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[11]One of the Deputy Attorneys General involved in the case stated early on that "If our court system doesn't work very well in this case, it is going to eat up the assets" of the Church. He explained that if this happened it would be the fault of the Church leadership, not the State. "They have it within their power to resolve this thing. They could end it immediately"—by cooperating with the State. (Seiler, "Church-State Clashes Take New Channel," *Los Angeles Times,* Feb. 11, 1979, p. 1, col. 1, at p. 32, col. 1.)

[12]A more realistic view of the State's actions in this case appears in Wiley, "A Constitutional Outrage," *Liberty,* Vol. 74, No. 3, p. 1 (May-June, 1979).

B. The State of California Has No Legitimate Interest in Exercising a General Supervisory Power Over Churches. Nor Does the State's Interest in Enforcement of Corporation Laws or in Prevention of Fraud by Individuals Support This Action Against the Church.

1. Only a Compelling State Interest Can Justify Any Interference With First Amendment Religious Freedoms.

The Establishment Clause of the First Amendment commands there should be no law "respecting an establishment of religion." "A given law might not *establish* a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment." (*Lemon v. Kurtzman,* 403 U.S. 602, 612 (1971).) The decisions of this Court dictate "that to pass muster under the Establishment Clause the law in question, first, must reflect a clearly secular legislative purpose [citation], second, must have a primary effect that neither advances nor inhibits religion [citations], and, third, must avoid excessive entanglement with religion [citation]." (*Committee for Public Education v. Nyquist,* 413 U.S. 756, 773 (1973).)

The Free Exercise Clause has a reach of its own. (*Gillette v. United States,* 401 U.S. 437, 461 (1971).) The free exercise of religion guaranteed by the First Amendment is one of those fundamental rights and liberties protected against state encroachment except for the most compelling reasons. (*Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940).) "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate

claims to the free exercise of religion." (*Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).) "The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order." (*Sherbert v. Verner*, 374 U.S. 398, 403 (1963).) And even then the State may support its actions only by demonstrating "that no alternative forms of regulation would combat such abuses without infringing First Amendment rights" (*id.* at p. 407, n. omitted).[13]

The action undertaken by the State of California violates both Religion Clauses by interfering with the freedom of the Church to be governed according to its understanding of Gospel, requiring explanation and justification of religious expenditures, physically removing control of Church operations from Church officers, and forcing unlimited disclosure of Church documents. As we next demonstrate, this action is not capable

[13]Thus, whether analyzed in free exercise or establishment terms, state intervention in religion requires far more than that the action "advance a rational and secular governmental purpose" (Opposition, p. 23). The cases cited by the State are not to the contrary. In both *Johnson v. Robison*, 415 U.S. 361, 384-385 (1974) and *Gillette v. United States*, *supra*, 401 U.S. 437, 462, there was at most only an "incidental burden" on the free exercise of religion, strictly justified in each case by "substantial governmental interests" "of a kind and weight" so as to sustain the challenged legislation relating to the constitutional grant of power to raise and support armies.

Prince v. Massachusetts, 321 U.S. 158 (1944) has been accorded narrow scope as an illustration of an instance wherein religious conduct was subject to regulation because it posed a substantial threat to public safety, peace or order. (See *Wisconsin v. Yoder*, *supra*, 406 U.S. 205, 230; *Sherbert v. Verner*, *supra*, 374 U.S. 398, 403.)

Braunfeld v. Brown, 366 U.S. 599 (1961) has been implicitly overruled and does not merit discussion. (See *McDaniel v. Paty*, 435 U.S. 618, 633, n.6 (1978) (Brennan, J., concurring) [Noting that to the extent *Braunfeld* conflicts with *Sherbert*, *Braunfeld* was overruled].)

of constitutional justification on any of the bases suggested by the State.

2. The State's Exercise of a General Supervisory Power Over the Affairs of Churches Is Plainly Violative of the First Amendment Religion Clauses.

The Church acknowledges the beneficial societal effects of religion and the right of a state to confer tax-exempt status on religious organizations in recognition of such effects. (See *Walz v. Tax Commission*, 397 U.S. 664, 672-673 (1970).) It is ironic, however, that the State would reason from this premise that religious organizations are automatically subject to state supervision and control. In a related context, this Court recently observed that the fact a religious organization operated summer camps did not mean the property was held as "the public's trustee." To the contrary, "as [a] private entity, [a church] is free to allocate its resources to serve its own institutional objectives. which may or may not correspond with community needs." (*United States v. 564.54 Acres of Land*, ... U.S. ....., 60 L.Ed.2d 435, 444 (1979).)[14]

Manifestly, the State's argument would prove too much. If the State had the right to supervise Church affairs it indeed could permanently install a deputy in the Church for this purpose, pass on the propriety of Church expenditures before the fact as well as after, and make the Church a petty bureaucracy in fact as well as in theory.

[14]This concept of religious institutional freedom may be contrasted with the State's professed indignance that the Church should decide to reduce the size of the College to return it to its fundamental purpose of training persons for the ministry. (Opposition Appendix A, pp. 4, 17.)

The Church acknowledges it does good works. Indeed, it is devoted to God's work, and charity is one of the highest Christian virtues. (See *Wisconsin v. Yoder, supra,* 406 U.S. 205, 215-216, 220 ["[I]n this context belief and action cannot be neatly confined in logic-tight compartments"].) But while the State of California, like many other states and nations, may be grateful for the Church's work, the Church does not for that reason become a branch of the State's system of social welfare. Church members do not tithe to a grand community chest; they support a religious mission. This cannot be erased by labelling the Church a charity, public or charitable trust, or simply a nonprofit corporation.

Clearly, California's assertion of a limitless supervisory power based on its characterization of the Church as a "charitable trust" is no more adequate than Wisconsin's appeal to the *"parens patriae"* concept in *Wisconsin v. Yoder, supra,* 406 U.S. 205. Indeed, it seems the former concept is only a variant of the latter, since the State invokes in this case *People v. Cogswell,* 113 Cal. 129, 136, 45 P. 270 (1896) ("The state, as *parens patriae,* superintends the management of all public charities or trusts. . . .") against religious organizations. What this Court said in *Wisconsin v. Yoder* applies *a fortiori* to this case (at p. 234):

> "In the face of our consistent emphasis on the central values underlying the Religion Clauses in our constitutional scheme of government, we cannot accept a *parens patriae* claim of such all-encompassing scope and with such sweeping potential for broad and unforeseeable application as that urged by the State."

This broad conceptualization of "charitable trusts" has no bounds. At the least, it must result in a "comprehensive, discriminating, and continuing state surveillance" in violation of the Establishment Clause. (See *Lemon v. Kurtzman, supra,* 403 U.S. 602, 619.) "Government may not engage in programs or enact laws that require extensive surveillance by civil authorities of the activities of religious institutions, since such surveillance entails the risk of entangling the State in matters of religious significance." Kauper and Ellis, "Religious Corporations and the Law", 71 *Mich. L. Rev.* 1499, 1568 (1973).

In any case, the concept does not explain its purpose. If there is a compelling state interest it must be embodied in the conclusion that a "charitable trust" is subject to state supervision and control.[15] Whatever the law may be in countries with established religions, a general supervisory power over religious organizations cannot co-exist with the First Amendment. In California, it is the First Amendment which has been forced to yield.

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[15]If, as the State contends, under state law only the State had standing to inquire into the affairs of a religious organization, clearly state law of standing rather than the First Amendment would have to give way. (See *Jones v. Wolf,* .... U.S. ...., ... (1979) (Slip opn. p. 12) ["the State may adopt any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free exercise rights or entangle the civil courts in matters of religious controversy." (n. omitted)].) As a matter of fact, however, if the ordinary rules relating to charitable trusts applied to religious organizations, "responsible individuals" would have standing to sue to enforce a trust. (*San Diego etc. Boy Scouts of America v. City of Escondido,* 14 Cal.App.3d 189, 195, 92 Cal.Rptr. 69 (1971).) In the instant case, the State has to date successfully opposed intervention by such responsible individual church members.

3. The State Is Not Seeking Merely to Enforce Corporation Laws. In Any Case, Such a Purpose Cannot Justify These Proceedings.

This action by the State was not undertaken to compel compliance with its corporation laws, notwithstanding the State's suggestion that the Church could have avoided State intervention in its affairs by not incorporating or by incorporating in a different form (Opposition, p. 27). On the contrary, the State's position is that "the Attorney General could take the same enforcement action as it is taking in the instant case with regard to an unincorporated church, and the fact that the Church has incorporated does not subject it to any more stringent supervision by the Attorney General than would otherwise be the case". (Plaintiff's Opposition to Demurrer to First Amended Complaint, filed June 28, 1979, p. 25.)

But even at face value the State's position raises insuperable constitutional questions: Can the State constitutionally condition incorporation by a religious organization on waiver of First Amendment rights to choose the form of church governance?[16] Does the State deny equal protection of the laws by permitting nonprofit incorporation to congregational but not hierarchical religious organizations or by supervising nonprofit religious corporations but not corporations sole or unincorporated religious associations? (See generally, Kauper and Ellis, *supra,* 71 *Mich. L. Rev.* at p. 1564 *et seq.*)

[16]"Transferred to a political context, the authoritarian structure of the Roman Catholic Church, for example, would be anathema to many Americans; but it ill behooves the courts to impose secular, political norms on church structures." (Note, 75 *Harv. L. Rev.* 1142, 1176 (1962), n. omitted.)

These questions would be squarely framed if the State brought an action in *quo warranto* to revoke the Church's corporate charter. If the State really seeks to enforce its corporation laws that is the obvious mechanism for doing so. But that is clearly not what the State has in mind. It really seeks and has succeeded in asserting a general supervisory power over the affairs of a religious organization.

That the Church is incorporated does not change the fact it is a church, any more than "an itinerant evangelist . . . become[s] a mere book agent by selling the Bible or religious tracts" (*Murdock v. Pennsylvania,* 319 U.S. 105, 111 (1943)). Indeed, any approach which would call a nonprofit religious corporation only a corporation and thereby cast aside all First Amendment concerns has long been repudiated by this Court. In *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94 (1952), Justice Jackson in dissent contended for just such an analysis, arguing (at p. 128): "When it sought the privilege of incorporation under the New York [Religious Corporations] Law applicable to its denomination, it seems to me that this Cathedral and all connected with its temporal affairs were submitted to New York Law." To him, the action was "an ordinary ejectment action involving possession of New York real estate." Not one other member of the Court endorsed this view.

Yet this is precisely the approach asserted by the State when it suits its convenience.[17] The State's claim

[17]The State's convenience changed again in a July 17, 1979 letter from the Attorney General to the California Supreme Court. There the Church is said to be involved in the action only as an "indispensable party" in light of the relief sought by the State.

that the action seeks removal of individuals from corporate but not ecclesiastical office is a perfect example. The "temporalities" are necessarily part and parcel of the religious nature of the organization. "It is plain that a religious organization needs funds to remain a going concern" (*Murdock v. Pennsylvania, supra,* 319 U.S. 105, 111); those funds are used to further *religious* goals, and the determination of what those goals are and how they should be furthered are *religious* determinations. Obviously a board of directors of a religious corporation must act with reference to religious aims.

It is simply sophistical to argue that the Church as a spiritual body may be run without reference to the Church as a corporation. Control of Church finances means control of the Church.

4. The State May Act to Prevent Fiscal Fraud Without Destroying the Church and Trampling the First Amendment.

It seems that the heart of the "charitable trust" theory advanced by the State is an interest in the prevention of fraud and misappropriation. Such an interest is clearly protected by the California Penal Code, and if the State has reasonable cause to believe a crime has been committed by Church officers, the State may proceed criminally against them. The State cannot, however, justify destruction of the Church to reach alleged wrongdoers. After all, the State claims the Church and its membership have been victimized, why should they be the victims of this action?

This Court has previously disposed of a comparable claim that a State's intervention in religious affairs was warranted as a means of preventing fraud. In *Cantwell v. Connecticut, supra,* 310 U.S. 296, several

Jehovah's Witnesses were convicted of violating a state law requiring a certificate as a condition of soliciting support for their religious views. "The State insist[ed] that the Act . . . merely safeguards against the perpetration of frauds under the cloak of religion." This Court reasoned (at pp. 304-305), "Conceding that this is so, the question remains whether the method adopted by Connecticut to that end transgresses the [religious] liberty safeguarded by the Constitution" and held the statute invalid. *Cantwell* clearly indicated the appropriate remedy for fraud (at p. 306): "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. *Certainly penal laws are available to punish such conduct.*" (Emphasis added.) (And see *United States v. Ballard,* 322 U.S. 78 (1944).)

This very point had been made years earlier in the context of one of the notorious Mormon cases. In *Davis v. Beason,* 133 U.S. 333 (1890), the Court discussed the necessity for religious freedom to yield at some point to the fundamental demands of society (at pp. 342-343):

> "However free the exercise of religion may be, it must be subordinate to the *criminal laws* of the country, passed with reference to actions regarded by general consent as properly the subjects of *punitive legislation.*" (Emphasis added.)

In *Kedroff v. St. Nicholas Cathedral, supra,* 344 U.S. 94, the State of New York had enacted legislation making all New York churches formerly subject to the administrative jurisdiction of the Patriarch of Moscow into an administratively autonomous district to be governed by a local American hierarchy. This legisla-

tion was apparently motivated by fear of Soviet control of the Church. This Court condemned the legislation as unconstitutional under the First Amendment, noting (at pp. 109-110): "Legislative power to punish subversive action cannot be doubted. If such action should be actually attempted by a cleric, neither his robe nor his pulpit would be a defense. But in this case no problem of *punishment for the violation of law* arises. . . ." (Emphasis added.)

In *Schneider v. Irvington,* 308 U.S. 147 (1939), a Jehovah's Witness was convicted of violating an ordinance prohibiting unlicensed door-to-door canvassing. Reversing the conviction on the grounds of the ordinance's unconstitutionality, it was stated (at p. 164):

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. *Frauds may be denounced as offenses and punished by law.* Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." (Emphasis added.)

The short answer, then, to the State's claim of fraud prevention as a basis for this suit is that the First Amendment nonetheless bars action which gratuitously invades religious liberty. If the State has reasonable cause to believe fraud has been committed, it can proceed criminally against the alleged wrongdoers. The State simply cannot justify taking over the Church, poring through all of its records—destroying it—to get at individuals.[18]

In sum, no compelling state interest supports this action. To the extent the action is authorized by California Corporations Code section 9505, the statute is unconstitutional. To the extent the action rests on some common-law basis, the common law must yield to the First Amendment. To the extent the State is investigating criminal violations, it must pursue criminal procedure.

Conclusion.

It could once fairly be said that ours is a religious country. However, in this post-Jonestown era religious scholars see an antireligious attitude holding sway, a suspicion of religious organizations, and a reluctance to speak out for religious freedom. Historically, it is exactly in such times that the oppressed have sought and found in the pronouncements of this Court a reaf-

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[18]The State does not and cannot justify seeking (and forcibly obtaining) disclosure of all Church documents including membership lists, thereby invading Church members' rights of privacy and freedom of association.

firmation of the basic principles of freedom under the Constitution.

Petitioners respectfully submit that it is again incumbent on this Court to declare that the religious liberty guaranteed by the First Amendment obtains even in the State of California.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1720

WORLDWIDE CHURCH OF GOD, *et al.*,

Petitioners,

vs.

THE STATE OF CALIFORNIA.

On Petition for Writ of Certiorari to the Supreme Court of the State of California.

Motion for Leave to File Brief Amici Curiae and Brief of

American Civil Liberties Union of Southern California,

Americans United for Separation of Church and State Fund, Inc.,

Alliance for the Preservation of Religious Liberty,

Institute for the Study of American Religion,

Berkeley Area Interfaith Council,

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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Alliance for the Preservation of Religious Liberty,
Institute for the Study of American Religion,
Berkeley Area Interfaith Council,

As Amici Curiae in Support of Granting Certiorari.

Pursuant to Rule 42 of this Court's rules, the following organizations respectfully move this Court for leave to file a brief *amici curiae* in support of granting certiorari in this matter:

1. The American Civil Liberties Union of Southern California is a non-profit membership organization and

regional affiliate of the American Civil Liberties Union, having approximately 20,000 members. Since its founding 56 years ago, it has dedicated itself to the preservation and development of rights guaranteed by the Bill of Rights, notably including the "free exercise" and "establishment" clauses of the First Amendment.

2. Americans United for Separation of Church and State Fund, Inc. is a non-profit Maryland corporation, having its headquarters in Silver Spring, Maryland. It is governed by a board of directors composed of members of many religious organizations as well as many concerned individuals, and was formed to maintain and advance civil and religious liberties through enforcement of the rights and privileges granted by the First and Fourteenth Amendments to the Constitution of the United States. Its board of directors is composed of the board of directors of Americans United for Separation of Church and State, a sister organization with some 40,000 members of various religious beliefs, and of no religious belief in all states of the United States, including California.

3. Alliance for the Preservation of Religious Liberty is a California non-profit corporation, having its headquarters in San Diego, California. It is a national organization, having some 20 chapters in 16 states. The organization is devoted to taking legal actions necessary to insure that the Constitutional rights of individuals and religious organizations are preserved.

4. The Institute for the Study of American Religion is an Illinois non-profit corporation, having its headquarters in Evanston, Illinois. It is a privately supported research facility for scholars dedicated to the study of small, "non-establishment" religious bodies and to the maintenance and preservation of their legal and constitutional rights. It compiles and publishes the "Encyclopedia of American Religions" and the "Directory of Religious Bodies in the United States", two standard reference works.

5. Berkeley Area Interfaith Council is a California non-profit corporation, having its headquarters in Berkeley, California. It is local in scope, its membership consisting of some 46 religious organizations, covering a wide spectrum of Judeo-Christian, Eastern and New Age beliefs, having as its purposes a witness to the oneness of humanity under God, the facilitation of communication within its local religious community and the implementation of cooperative action in matters of joint interest, including the enhancement and vindication of the religious protections contained in the Federal Constitution.

Consent to File This Brief of Amici Curiae Was Requested of the Parties but Was Refused.

These moving parties have requested permission of the parties to this matter to file a brief *amici curiae* in connection with the pending Petition for Writ of Certiorari. Although the Petitioners gave their consent, the State of California declined to consent. Accordingly, this motion requests leave of Court to file the accompanying brief *amici curiae*.

The Accompanying Brief Articulates From the Informed and Detached Viewpoint of a Broad Spectrum of Major National, Regional and Local Religious and Civil Liberties Organizations the National Importance of the Subject Case and It Underscores the Gravity and Urgency of the Issues Tendered.

The brief of *amici curiae* presents the unique viewpoint of a broad spectrum of major national, regional and local religious and civil liberties organizations on the gravity and urgency of the issues raised by the pending Petition for Writ of Certiorari. These moving parties are not involved in any of the activities alleged by the California Attorney General to constitute wrongdoing on the part of the Worldwide Church of God (the "Church"), nor would movants have any interest in protecting fraudulent behavior perpetrated under a religious mask. On the contrary, it is in the interest of each of these moving parties that all religious institutions be worthy of the respect, loyalty and devotion of their adherents and contributors. But the Attorney General has claimed that the Church's resistance to the State's examination in itself proves that the Church has something to hide. This proposition and the Attorney General's asserted right to seek punishment for the mere attempt to assert legal claims to religious liberty is anathema to *amici curiae*. This *amici* brief in support of the Petition for Writ of Certiorari and in support of the underlying freedom of religion claims asserted by the Church is intended to refute the Attorney General's propositions, to support the Church's position and to present the views of crucially interested nonparties as to the ripeness for decision and magnitude of the issues necessarily raised by this case.

The accompanying brief *amici curiae,* expressing the views of so broad and representative a group of religious and civil liberties organizations, contributes an important dimension to the pending petition not otherwise available to the parties or this Court: this matter is of wide-spread and urgent concern to responsible national organizations interested in the free exercise of religion and in the avoidance of government entanglement in religious institutions. We believe the unique vantage points of these *amici* afford a helpful perspective to the fundamental constitutional issues presented to the Court.

These *amici* are also in a unique position to emphasize to the Court the lateness of the hour to the Church, which has withstood an assault in force for almost nine months, as well as the crippling pressures caused by the Attorney General's actions and to articulate the menace they pose to all organized religious bodies.

For the foregoing reasons, the moving parties urge this Court to permit them to file the accompanying *amici curiae* brief to urge upon this Court that it grant the Petition for Writ of Certiorari of the Worldwide Church of God, *et al.*

Respectfully submitted,

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LEE BOOTHBY,
FLOYD L. MORROW,
By FRED OKRAND,
Attorneys for Amici Curiae.

IN THE

Supreme Court of the United States

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WORLDWIDE CHURCH OF GOD, *et al.*,

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THE STATE OF CALIFORNIA.

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BRIEF OF

American Civil Liberties Union of Southern California,
Americans United for Separation of Church and State Fund, Inc.,
Alliance for the Preservation of Religious Liberty,
Institute for the Study of American Religion,
Berkeley Area Interfaith Council,
As Amici Curiae in Support of Granting Certiorari.

Introductory Statement.

Amici curiae believe, with Edmund Burke, that for evil to triumph it is necessary only that good men stand silent. Accordingly, they lend their voices in support of the Petition for Writ of Certiorari of the Worldwide Church of God, et al.

A. The California Attorney General Claims Unprecedented Jurisdiction to Audit, Supervise and Regulate the Affairs of All Churches.

Unbelievable as it may seem nearly two centuries after the First Amendment guaranteed separation of church and state, the Attorney General of California claims that all churches located in California are charitable trusts for the benefit of all the people of the State of California and are subject to continual audit and supervision by the State. To the California Attorney General, a church's assets are public assets and its records are public records. There are no private interests involved and consequently no private rights. A church's property rests in the court's custody, and church leaders are merely trustees who serve at the State's pleasure and are allowed by the State to manage it on a day-to-day basis. A church is a ward of the court, and the church's affairs and conduct are subject to the unlimited scrutiny, supervision and control of the State.[1]

In the words of the Attorney General's own Deputy:

Reporter's Transcript Jan. 5, p. 97:

"[T]his court is the perpetual, ultimate, continuing custodian of charitable funds, and that custody and the powers and duties that flow from that custody under the law *have nothing to do with the First Amendment*." (Emphasis added.)

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[1]While the Attorney General's original claim of jurisdiction was based on California Corporations Code §9505 (which pertains to certain nonprofit corporations), the Attorney General has since clarified his position and now claims a common law right to audit and supervise *all* churches, incorporated or not. (Attorney General's Opposition to demurrer to First Amended Complaint.)

Reporter's Transcript Jan. 10-11, pp. 7-8:

"Every other party who comes before the Court has some claim to its own property and has some right to resist intervention by the Court. But for 700 years, Your Honor, it has been the law in England and America that charitable funds are public funds. They are perpetually in the custody of the Court. The Court is the ultimate custodian of all church funds."

Reporter's Transcript Jan. 10-12, p. 9:

"It is Your Honor's responsibility, as we see it, to do whatever needs to be done to appoint receivers and other agents to do whatever needs to be done to . . . protect the assets and records, *and no one has any basis to resist that intervention.* (Emphasis added.)

Reporter's Transcript Jan. 10-12, p. 12:

"*You are the guardian and this church is your ward.*" (Emphasis added.)

Reporter's Transcript Jan. 10-12, p. 13:

". . . People send in their money, their tithes to do what they believe is God's Work. . . . I believe we will show you today, that the money is not being used for God's work. . . ."

Reporter's Transcript, Jan. 10-12, p. 361:

"But there are no private rights here. This money [Church funds] is public money. This court is the guardian of it today; it was the guardian of it last week; it was the guardian of it in 1948, and it will continue to be the guardian of this money as long as the charitable trust continues to exist."

Amici curiae are astounded that the chief law enforcement officer of our most populous state, indeed that any public official, would espouse a theory of church-state relations so utterly at odds with the rights guaranteed by the Religion Clauses of the First Amendment and this Court's consistent construction of the First Amendment, as illustrated by cases decided as recently as the last few months.[2] Indeed, it was the chief purpose of the Religion Clauses to remove from our national life the very sort of religious oppression that the Attorney General's theory espouses.

> "For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson Case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable." *People of the State of Illinois ex rel. McCollum v. Board of Education,* 333 U.S. 203, 212, 92 L.Ed. 649, 659 (1947).
>
> "But the purposes underlying the Establishment Clause go much further . . . . Its purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion." *Engel v. Vitale,* 370 U.S. 421, 431, 8 L.Ed.2d 601, 608 (1962).

Unfortunately, the California Attorney General's theory has not remained an abstraction. In the last

[2]*NLRB v. Catholic Bishop of Chiago,* ..... U.S. ....., 59 L.Ed.2d 533 (1979); *Jones v. Wolf.* ..... U.S. ....., 61 L.Ed.2d 775 (1979); See also, *Surinach, etc. v. Pesquera* (1st Cir. 1979) #78-1527; *International Society, etc. v. Bowen,* 600 F.2d 667 (7th Cir. 1979).

nine months it has unfolded in all its horrifying potential, with the State of California conducting an investigative seizure of the Worldwide Church of God,[3] invoking powers whose exercise has already inflicted grave damage to the Church and to the cause of religious liberty, and whose continued exercise would impose even more disastrous, and ultimately terminal, harm.

B. The California Courts Have Upheld and Are Currently Enforcing Massive Intervention Into Church Affairs Without Any Determination That Such Action Is Required to Protect the Public.

Pursuant to his novel theory of church-state relations, the Attorney General commenced the present action against the Worldwide Church of God (1) to compel a comprehensive audit of all Church receipts and expenditures, (2) to remove the present Church leadership and replace them with officials acceptable to the State,[4] (3) to change the form of Church governance from hierarchical to congregational, (4) to place a receiver in control of the Church, and (5) to enjoin Church leaders from resisting all such efforts.

Incredibly, the California courts have adopted the Attorney General's position *in toto* and have rejected all arguments that the State's actions are proscribed by First Amendment guarantees of religious freedom. Accordingly, commencing on January 2, 1979, the California courts placed a receiver in complete control and operation of the Church. The receiver was directed

[3]See Wiley, "A Constitutional Outrage" in *Liberty,* May, June, 1979, reproduced in full, attached, as Appendix A.

[4]One of the grounds urged as a basis for removing Church leaders is their resistance to this lawsuit! (First Amended Complaint, Paragraphs 18, 19 and 20.) *Cf. Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976).

to seize all Church records and make them immediately available to the Attorney General; he was directed to seize all of the Church's physical assets in California, including bank accounts; he was empowered to hire and fire Church personnel, including ministers; he censored and interdicted certain communications between the spiritual head of the Church and its members; he was authorized to control all Church expenditures, including those intended for religious purposes; and he attempted to gain control of all contributions to the Church, worldwide. In all of these activities, the receiver acted pursuant to court orders based on the stated premise that the First Amendment afforded no protection to the Church and indeed was irrelevant to the proceeding.

Subsequently, the trial court has issued a steady stream of discovery orders directing the Church to turn over documents for inspection, to answer interrogatories concerning Church affairs and ordering Church leaders to appear for deposition—all with a view to laying bare the innermost workings of the Church to the State. While the Attorney General's end objective is surely offensive to First Amendment rights, the point we emphasize here is that the *mere process of such litigation itself* violates First Amendment safeguards.

While this case is concerned with the plight of the Worldwide Church of God and that of its leaders and its members, the focal point of *amici curiae* attention is upon the theory of church-state relations advanced by California's Attorney General and endorsed and enforced by California's courts. This concept of church-state relations and the regime of control invoked to support it is, in our view, repugnant to the Religion Clauses of the First Amendment and inimical to the free exercise of religion by all churches and all faiths.

Moreover, as we note in the next section the present case apparently is not an isolated one, although it is the first to come to our attention. This case has received wide attention only because the Worldwide Church of God possesses the resources and the will to resist the destruction of its First Amendment rights.

Moreover, we are concerned that the mere commencement and prosecution of this action or similar actions, are *in themselves* destructive of First Amendment rights. As this case demonstrates, it is not necessary for the State to prove wrongdoing or to obtain a judgment. The litigation process itself, *i.e.*, receivership, injunction, forced disclosure of Church information by discovery and the like—bending the Church to the will of the State in the courts—is wholly antithetical to the preservation of First Amendment rights. While the constitutional issues remain unresolved, First Amendment rights will continue to be destroyed on a daily, continuing basis in the course of litigation. Therefore, the question is not only ripe for review, review is urgent.

C. The Present Case Is Not an Isolated One. The California Attorney General Has Acknowledged Exercising Similar Jurisdiction Over Other Churches.

Were this an isolated case, a single aberration from accepted First Amendment norms, it would command our attention, but not necessarily our active involvement as *amici curiae*. However, by the Attorney General's own admission this is *not* an isolated case. In a letter to California State Assemblyman, William H. "Bill" Ivers of January 31, 1979, Attorney General Duekmejian stated that there are "other cases in which this office has been involved in the supervision of assets

held by religious organizations, *many* of which were resolved short of trial and appeal". (emphasis added) Thus, the present case is merely the tip of the iceberg. Evidently the California Attorney General is regularly engaged in supervision of the assets of churches and other religious organizations. This raises a number of chilling questions:

1. How many churches have been brought under the "supervision" of California's Attorney General?

2. What criteria does the Attorney General apply in determining which churches shall be the beneficiaries of his supervision?

3. What state-imposed standards does the Attorney General apply in supervising church assets to determine whether they are being used for "proper" religious purposes? ["for God's work"].

4. How many religious organizations have yielded to state intrusion ["short of trial and appeal"] because they lack the capacity, resources or will to resist?

In a very real sense the present case appears to have unearthed an established and ongoing program of state intrusion into religious affairs.

In seeking to supervise the Worldwide Church of God, the Attorney General of California is pursuing a policy of potential impact (in a very real sense) upon all religious bodies in California. These *amici curiae* are concerned that the Attorney General's claimed power to "supervise" religious institutions will necessarily result in drastic infringement of traditional religious freedoms and will ultimately lead to state-established standards of religious observance and practice.

These *amici curiae* are also concerned that many religious organizations may not prove strong enough

to resist official demands by the State, and certainly not to resist a sustained assault such as that now being mounted against the Worldwide Church of God. The ominous references by the Attorney General to "other cases", "*many*" of which have been resolved short of trial or appeal raises the spectre of successful and ongoing state coercion.

The fact that the Worldwide Church of God has survived and continues to assert its constitutional rights after nine months of massive and debilitating litigation is heartening to all those who cherish religious liberty. These *amici curiae* support the Church's resistance to its supervision and audit by the California Attorney General and urge this Court to grant certiorari at this time *before* the California Attorney General succeeds in silencing this Church forever.

Conclusion.

Amici Curiae have never before encountered so destructive a governmental assault upon religious freedom as that presented by this case. Reports of the State of California's activities would be almost unbelievable were they not supported in full by court transcripts and written documents.

Amici Curiae urge that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A.

VOLUME 74 NUMBER 3, MAY-JUNE 1979

LIBERTY

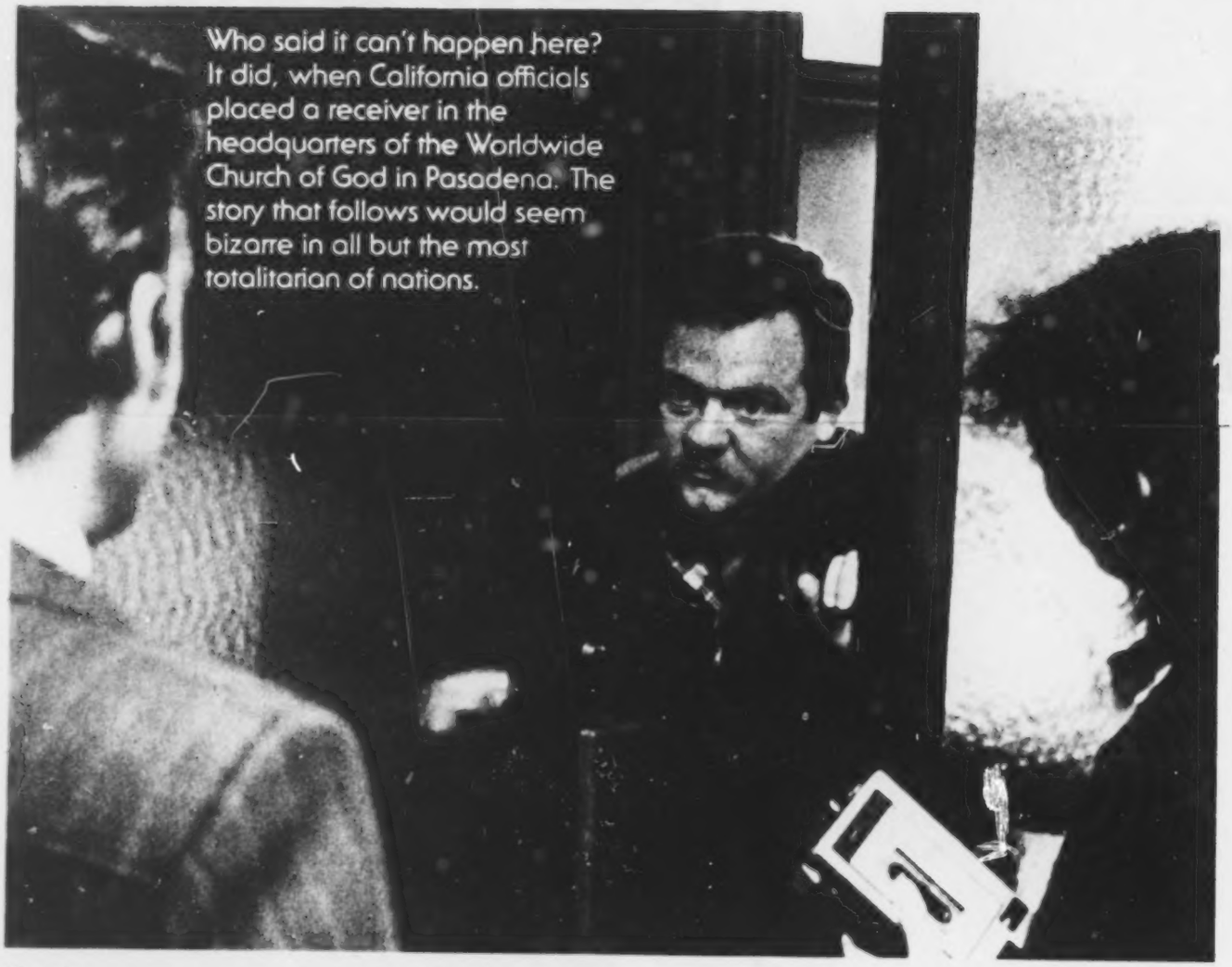
A MAGAZINE OF RELIGIOUS FREEDOM

POST-GUYANA HYSTERIA

State of California

Occupies Headquarters of the Worldwide Church of God

A CONSTITUTIONAL OUTRAGE



(Cover)
State officials on way to reoccupying Hall of Administration at the Pasadena headquarters of the Worldwide Church of God after a sit-in by up to 4,000 church members had forced removal of the state-appointed receiver.

(Above)
Security man for receiver denies Worldwide Church of God personnel admittance to executive suite.

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By Jerry Wiley

Imagine that tomorrow morning the deputy attorney general of your state, accompanied by a platoon of officials, pulls up in front of the headquarters of your church. A few dissidents have alleged that money is being misused, and that church assets have been disposed of at below-market value, the cashbox pilfered, and documents shredded. Imagine that they burst in, push secretaries aside, rummage desks, safes, confidential membership lists, and computer tapes.

Imagine further that they maneuver replacement of your denomination's president with a dissident minister, place a receiver in the building at $150 an hour—at the church's expense—and instruct members to continue sending tithes and offerings to the receiver for his disposition. Your deposed president protests and writes a letter to church members asking for funds to fight the takeover in the courts. His letters never reach their destination; they are impounded by the state in the local post office.

It couldn't happen here? Not in America, with our "high and impregnable wall" between church and state?

All Photos © by Herbert W. Armstrong

Principals in church split: Herbert W. Armstrong, 86, and his son, Garner Ted Armstrong, 48. Dissident members who took legal action against the church are alleged to have been put up to it by Garner Ted, who has started his own denomination.

It did. It happened to the Pasadena-based 100,000-member Worldwide Church of God, headed by 86-year-old Herbert Armstrong. It happened on January 3, 1979, and during subsequent weeks. Here's the story.

At 9:00 A.M. on January 3 Retired Judge Steven Weisman arrived at the receptionist's desk of the administrative offices of the Worldwide Church of God in Pasadena. As a court-appointed receiver, he had come to take over the church. Accompanying him were attorneys for the dissident church members and representatives of the attorney general's office. The receivership came without warning to the church, though the court's own rules provided for a minimum of four hours' notification. As might be expected, church employees were surprised, and not surprisingly, they resisted what seemed an unfair and highhanded attempt to take over their operations. It was afternoon before Weisman effected entrance to the executive offices. His first act was to fire a trusted employee of the church, executive secretary Virginia Kineston.

As church attorneys scrambled to erect legal bulwarks, a story unfolded that would seem bizarre in all but the most totalitarian of nations. Investigation revealed that no case was filed before Superior Court Judge Jerry Pacht reviewed the unsubstantiated accusations of six ex-Worldwide Church of God members and agreed to issue a broad-reaching order for a receiver.

The six had come to deputy attorney general Lawrence Tapper with a claim of massive diversion of funds of a charitable organization (the Worldwide Church of God) to personal use. Perhaps the story really had its beginning, however, with expulsion from the church of Garner Ted Armstrong, Herbert Armstrong's son, who subsequently set up his own denomination, the Church of God, International. Even earlier a number of ministers had broken away from the parent organization. Increasingly, allegations were heard that the church's 48-year-old attorney and treasurer, Stanley Rader, dictated the decisions of the elderly Armstrong, who is still recovering from a heart attack suffered a year ago.

It was Rader and finances that figured prominently in the January 3 confrontation. Specifically the six former members—alleged to have been put up to it by Garner Ted—accused Herbert Armstrong and Stanley Rader of (1) not accounting for church finances as required by state laws governing charitable organizations; (2) pilfering property and assets of the church "for their own use and benefit," and (3) shredding and destroying financial records. In their program to take the gospel to the world, it was said, church higher-ups had sponsored banquets for heads of state, presented them with gifts of Steuben crystal, and run up formidable expenses as they sped around the world in Armstrong's Grumman II jet.

Stanley Rader was alleged to be profiting in an unprophetlike way from his position near the heart of Patriarch Herbert Armstrong. His remuneration, it was said, topped $200,000, and was in addition to an unlimited expense account and church-purchased homes in Beverly Hills, Pasadena, and Tucson, Arizona.

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Of course, it might be asked, What business is it of the state what a church pays its top officials or how lavishly it chooses to finance its ministry? Should it be of concern to the State of California that a Pentecostal storefront preacher makes $8,000 a year, while a television pastor may make well over $100,000; or that the princes of the Roman Catholic Church in the Los Angeles Archdiocese live in a mansion and are chauffered about in Mercedes?

Perhaps the Worldwide Church of God was just about the right size—big enough to be visible but not so big as to

"I think having so many of these things—Jonestown, Scientology's problems with the Federal government, the alleged snake attack on an opposing lawyer by Synanon members—has produced a syndrome that we have to stop crazy, kooky religions, religions out of the mainstream.

"There is an antireligious movement abroad in the land. It is made up of deprogrammers, mainline churches, and synagogues worried about crazy cults with wrong doctrines wooing away young people."—*John Crossley, associate professor of religion, University of Southern California, and member of the American Civil Liberties Union's regional church-state committee.*

decide elections—for a post-Guyana demonstration of the attorney general's commitment to preserving assets of the people of California from malfeasance of cults. Certainly what the deputy attorney general asked of the Superior Court demonstrated anything but underreaction. He asked the court to take over the charity—the Worldwide Church of God—and operate it while charges of the dissidents were investigated. Aside from the religious liberty issues, a receivership is a device rarely used even in business disputes, and only then in the most extraordinary of circumstances.

Workman hired by receiver searches for hidden records in air-conditioning room emergency exit; locksmith for receiver changes locks on executive suite doors.

Through the court-appointed receiver he hoped to find evidence to substantiate the charges made by his informants. And the church would not get the usual four-hour minimum notice, a rule of the court itself; the law's ideal of a "fair hearing" could come later—months later—at a trial. At any cost he would protect the citizens against the church's "misuse" of funds. So he argued before the court that money donated to the charitable organization was "held for the benefit of the public at large."

What deputy attorney general Tapper asked—and got—from the court is mind-boggling to the student of constitutional law: that the judge meet with him, the accusers, and their attorneys before he was required to file any action against the church or even notify the church that an action was filed, and that immediately upon filing the suit, the judge would order a receiver placed in control of all the church's local assets, and, moreover, forbid anyone in the church from managing and disposing of a church asset. The court also retained the power to decide whether what the church proposed to do was religious.

The deputy attorney general well knew that he was asking the court to commit itself to giving the state what it wanted against the church without the church's even having had opportunity to know that action was pending. Indeed, he was asking an advisory opinion from the court concerning the outcome of a case not yet filed, when the law in his jurisdiction did not provide for advisory opinions. He was asking the court to appoint someone to run the church on the unsubstantiated accusations of six dissident members—some say "excommunicated" members. He was asking the state's judicial branch to take over the church before a case was filed, and upon the uncorroborated accusations of the dissidents—all this in spite of state and federal constitutional provisions for strict separation of church and state!

When the judge's clerk was asked if it were possible for parties to have the judge discuss a case requesting a receiver without first filing the lawsuit, the clerk correctly replied, "No. The court would be without jurisdiction to consider the matter."

However, the court reporter's transcript proves that Judge Pacht *did* hear the accusing parties without their filing a case, and that he told them he would issue an order favorable to their position when they did so! All this occurred without anyone at the Worldwide Church of God knowing about it until Receiver Steven Weisman showed up at the door the next day, January 3.

Weisman came armed with a legal order (*ex parte*—without hearing from the accused) providing for the takeover of all assets, income, and operations of the church by a receiver not of its faith. The church has, or had, $80 million in assets, $70 million in annual income, and 100,000 members worldwide. If the court's first proceeding was Star Chamber in form, the order the court issued was even more inimical to the legal health of the church. The order stated, in part, that the court receiver was empowered to:

(1) "take possession and control of the church, including all its assets. . . ;

(2) "supervise and monitor all of the business and financial operations and activities of the church;

(3) "take over the management and control [of the church] to the extent that [he] deems it necessary in his sole discretion;

(4) "hire and employ and retain his own counsel, accountants and any other personnel . . . which he deems necessary to assist him [and] *to pay them reasonable compensation out of the funds and assets of the church;*

(5) "*suspend or terminate any employee, officer or agent of the church in his sole discretion as he deems necessary;*

(6) "direct that any [suspended or terminated] officer or employee or agent not be permitted access to the grounds or facilities of the church;

(7) "*[take] possession and control of all the books and records of the church [and make] available [said books and records of the church] to the representatives of the [State Attorney General and to the relators, who are dissident members of the church];*

(8) "interfere [in the operations of the church] if he . . . determine[s] *in his own discretion* that it is necessary to interfere;

(9) "take over *any portion of the operation as he deems necessary* in order to protect the church and its assets;

(10) "file a petition with the [state] court [if the receiver deems it necessary

Receiver Steven Weisman (right) argues the state's position with church officials and newsmen.

at any time] *to remove Mr. Armstrong—the Pastor General—or Mr. Rader* or both;

(11) *"determine in his sole discretion Mr. Armstrong's and Mr. Rader's compensation* for services and any expenses that are incurred by them during the course of [their employment by the church];

(12) *"conduct a thorough audit of the financial and business dealings of the church;*

(13) "review all allegations of malfeasance and neglect concerning the financial and business affairs of the church;

"There's no question that since Jonestown there's greater temptation for government to intervene in church affairs. There's an antireligious climate, and I think there's a tendency for government to overreact."—*John V. Stevens, Sr., director of the Seventh-day Adventist Church's Western regional church-state council.*

Rafael Chodos, attorney for the dissident ministers, searches for records in the financial affairs and executive suite.

"We believe that 1979 will see the greatest activity in the courts against offbeat religions. In an attempt to prevent another Jonestown situation, we will see a ripping away of the protection of the First Amendment's religious clauses."—*Lee Boothby, general counsel, Americans United for Separation of Church and State.*

(14) *"take possession and control of the funds* of the church forthwith and deposit them in a special receiver's account [in his sole discretion]."

The court reserved to itself the resolution of "any dispute arising between the receiver and ecclesiastical authorities of the church over whether a particular matter is, in fact, ecclesiastical in nature," and the issue of whether Herbert W. Armstrong or Stanley Rader should or could be removed from office!

The Worldwide Church of God met the state's assault by trying to get the receivership lifted. Their first attempt was denied on January 10. The church's attorneys carried the battle to the state in the trial court, appellate court, and California Supreme Court, as well as the Federal District Court. The attorneys' fees must be staggering for the exhaustive papers in support of the church's position that the state could not put a receiver in the church upon unfounded accusations.

The response to the church's positions was frighteningly simplistic. His office, said the attorney general, is responsible by law for the overseeing of charitable organizations. Therefore accusations that the church was spending too much on expenses for its employees and guests, such as foreign dignitaries, and that assets might have been sold below market value justified the state's running the church until the accusations could be either proved or disproved. Evidence concerning the veracity of the unsubstantiated accusations, he argued, "might be destroyed by those in charge of the church."

Ironically, the only evidence used to substantiate charges of impropriety on the part of the church's leaders, Herbert W. Armstrong and Stanley Rader, were details of expenditures that they themselves had included in an open annual report!

One of the dissidents' most incendiary charges was that the Texas branch of Ambassador College was being sold for $10.6 million, when it was worth more than $30 million. This transaction, said one plaintiff, was "the last straw," and Judge Pacht had characterized it as "one cruncher."

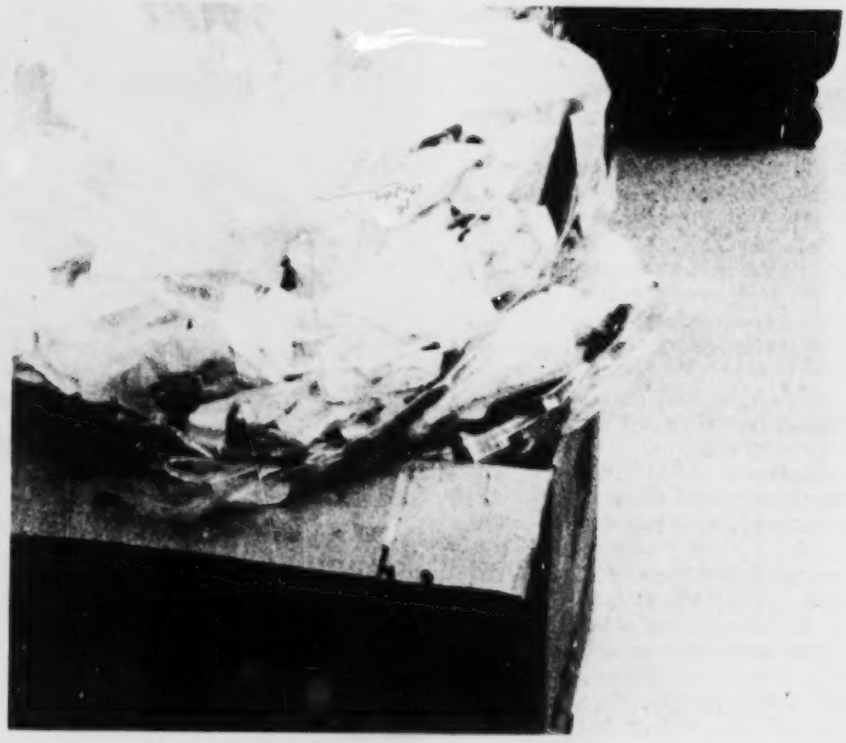
But the $30 million figure proved to be not only highly incendiary but highly inflated. Receiver Weisman approved sale of the property for—yes—$10.6 million, a fair value according to independent appraisers. But, because of the receivership, the buyer backed out, leaving the church deprived of the property's fair-market sale and costing the church continued maintenance on property it is no longer using.

The most serious of the accusations were against Stanley Rader. He was said to be guilty of conflict of interest in that his accounting firm, law firm, and advertising agency supplied services to the church for compensation while he was

serving as a director of the governing board.

Mr. Rader was further accused of receiving too much compensation for his work for the church—a sum variously reported at $100,000 to $200,000 a year, plus expenses. In addition the church was alleged to have purchased a house or houses for him. (The receiver was to be paid $150 an hour from church funds—a rate of compensation amounting to $228,000 a year for 48 weeks of five eight-hour days. Before the receiver was removed on February 22—and a new one subsequently reinstated on March 12—he was spending money contributed by loyal church members for religious purposes at the incredible rate of $25,000 a week, not including his own fee of $6,000 a week—a rate of expenditure far higher than anything the dissident church members had accused even Mr. Rader of.)

Mr. Rader was further accused of criminal fraud of a nature unspecified, but presumably having to do with his not inconsiderable influence upon the programs of the church. Each charge of impropriety was denied in sworn documents presented to the court in mid-January, when the church and the accused officials were given opportunity to reply.

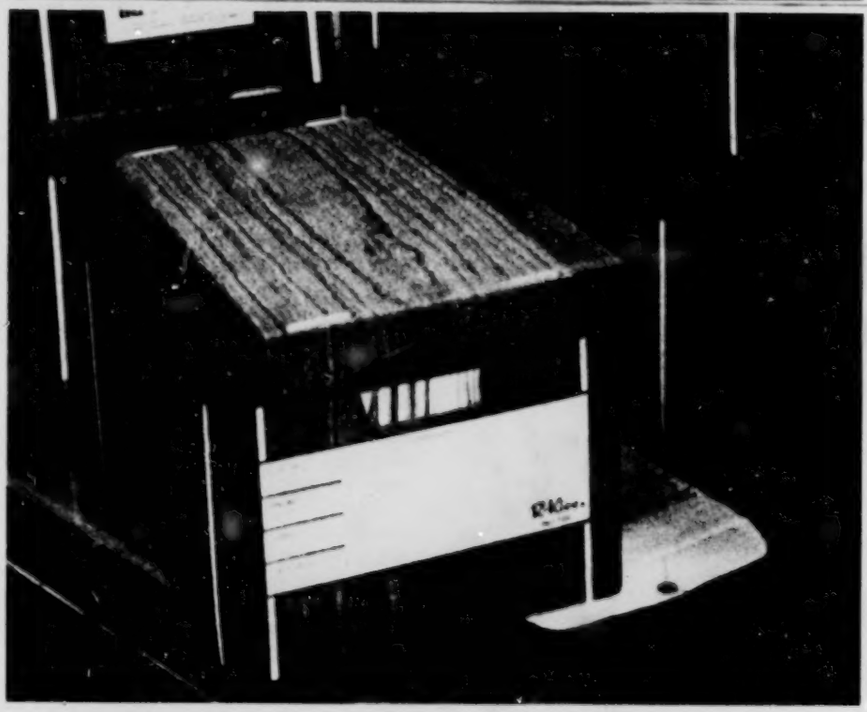


Fearful that evidence was being destroyed, Receiver Weisman refused to allow trash to be removed.

Were the state charges sustained? Had the fishing expedition through the church's files—and extending even to examination of its garbage—provided new evidence to sustain such a drastic action as had been taken against the church? Here is what Judge Julius Title had to say, in part, after the hearing:

"Now, I think I have already indicated in my comments to counsel during argument that I don't believe from the state of the evidence that the plaintiff [the accusing dissidents] has made any real showing of substance that properties have been sold below market value.

"The declarations which were filed by the plaintiff in this regard have indulged in sheer speculation, conclusion and hearsay regarding the sales, and those are contrary to the specific declarations of the defendants [church officials], and unless the appraisal of defendants . . . [is] shown to be unreliable or just completely untrue at the time of trial, I don't believe that the plaintiff will be able to establish that the sales heretofore made have been improper in any respect, at



Plaintiff's attorney Rafael Chodos (left), with records being removed from the executive suite by the receiver.

least solely on the basis that they were below market value. . . .

"There have been some serious inferences which have also been raised . . . possible conflicts of interest . . . questions raised . . . that there might conceivably be some problems."

Since when is it considered sufficient in American law to take management from any legal entity, much less a church, where the court concedes that to do so would be on the basis of "sheer speculation," "inferences," "possible conflicts of interest," "questions raised," and "conceivably . . . some problems"? Nevertheless, the court confirmed the prior order and the receiver remained in the church.

By stepping in and running the church's affairs for nearly two months, did the state really interfere with the church's carrying on its work? Emphatically, Yes! For example, in addition to firing a trusted employee, the receiver caused the United States Post Office to refuse to mail 60,000 letters from church leader Herbert Armstrong to the membership. The receiver hired a disfellowshiped member of the church to work at the headquarters, even though that was against the express beliefs of the church, and other church members are forbidden contact with disfellowshiped members. The United California Bank revoked the church's line of credit and called all demand notes because of the receiver's being installed. The receiver stopped payment on all outstanding checks, thus causing great hardship to many of the poor and widowed who receive assistance from the church. The same action harmed the suppliers of goods to the church and impaired its credit. Where the church had been given account-billing courtesy—permitting it to pay for radio and television time after airing its religious programs—the media demanded cash in advance after the receiver was installed.

The court order created other problems, as it soon became obvious. Because the receiver and the accusing dissidents were to be allowed access to church records, letters between the church and its attorneys (privileged under the Constitution and Evidence Code), letters between ministers and

penitents or other members (privileged), membership lists, and all correspondence were laid bare in violation of both statutes and constitutional protections at both the state and the federal level.

Not unreasonably, the church's offerings, based on a strong tithing membership, dropped off precipitously. Members were unwilling to have their money spent by the receiver. Their withholding of tithe threatened the life of the church even more drastically than the accusations of the dissidents. The very financial disaster the church's accusers purported to fear may have been furthered by the receivership.

Further, the Superior Court of California and the state's attorney general should look to the law promulgated by the United States Supreme Court in *New York v. Cathedral Academy* (1977). "The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." Yet it is precisely this power that the California court reserved to itself in its action against the Worldwide Church of God.

The court's order makes a travesty of many of the freedoms we have taken for granted. In addition to interference with religious freedom, there is interference with free speech, interference with privacy, interference with the minister-penitent privilege, interference with the attorney-client privilege, and denial of due process (of fairness in judicial proceedings).

The United States Supreme Court noted that the establishment clause of the First Amendment was to protect from the evils of "sponsorship, financial support, and *active involvement of the sovereign in religious activity*" (*Lemon v. Kurtzman* and *Walz v. Tax Commissioner*). Before the Worldwide Church of God case reaches the Supreme Court, the state will be well advised to get out of the business of religion entirely and to pursue remaining problems in a far less intrusive manner. The state is under constitutional obligation (1) to prove, clearly and convincingly, any violation of a compelling state interest by the church; and (2) to seek the least restrictive or intrusive means for achieving legitimate state objectives—if any.

Business of the church opened to state inspection.

But what alternative did the state have, when brought evidence, however flimsy, of financial mismanagement of a charitable trust? If Mr. Rader or any other church official is guilty of a crime, the attorney general has available the not inconsiderable power of the criminal law. In a similar situation, the United States Supreme Court stated that the appropriate remedy is to file criminal proceedings against the charged individuals, and not to put a receiver in the church (*Cantwell v. Connecticut*).

Robert Kuhn (gesturing), a disfellowshiped official of the church, disputes the case with Raymond McNair, deputy chancellor of Ambassador College.

Worldwide Church of God treasurer Stanley R. Rader—storm center of the pandemonium in Pasadena.

No, it may not have been *your* church this time. But tomorrow it may be. For unless all who cherish freedom speak up on behalf of a church whose doctrines and practices they may not respect or hold, their church to some degree is more likely to be next.

Whatever is done now for the Worldwide Church of God, however successful it is in warding off the encroachment of the state, one is left with the sad conclusion that it has been irreparably damaged. Plaintiffs contend that they took action to save the church. They may have destroyed it. □

What Is a Cult?

By Brooks Alexander

What is a "cult"? Ten or twenty years ago, this would have been an easy question to answer; today the guidelines have become somewhat muddled.

The origin of the word is the Latin *cultus*, a term meaning a system of ritual, ceremony, or liturgy. Our English version carries this meaning. A secondary meaning designates a teaching, group, or movement that deviates from orthodoxy while claiming to represent the true faith. In this sense, a cult can be recognized by defining it in relation to some standard of orthodox belief. In the Western world, that standard has usually been one of orthodox Christianity, though in principle it could be a standard of orthodox Islam, Judaism, Zen, or witchcraft. In fact, there are cults within all these groups, and more. When the Christian church first appeared it was technically a cult of Judaism, insofar as it differed from the dominant orthodoxy of its day.

Within the past decade or so, sociologists, popular authors, and the secular press have begun to use the word *cult* in new and often poorly defined ways. Today controversy seethes in the academic world as to what (if anything) "cult" *does* mean. One school of sociological thought defines a cult as "a deviation from orthodoxy"; however, the concept of "orthodoxy" is changed by broadening it from a strictly religious standard to a social and cultural one. In this view, cults are groups that break off from the "conventional consensus and espouse very different views of the real, the possible and the moral."[1]

Other authorities put forward alternative definitions as the fruit of their own studies. A survey of the literature of sociology reveals that there is a great deal of disagreement among scholars. The popular press has added to this conceptual turbulence by applying the label "cult" to almost any movement that is weird, sinister, authoritarian, or incomprehensible to the writer.

Such confusion is perhaps inevitable when a term that is essentially religious in derivation is appropriated by analysts who have no religious standard of their own. Under the circumstances, we are entitled to ask whether the word has lost its usefulness and usability altogether. Even if the expression *had* an agreed-upon meaning, its usefulness would be limited, because dividing the religious and quasi-religious phenomena of the world into cult versus noncult categories does not greatly advance our understanding or aid our wise behavior. Even after such a label is applied, the toughest questions still hang around waiting to be answered. Nevertheless, it is still worth trying to get a handle on whatever descriptive quality or value the word may have, simply because it is so widely used.

Let's begin by eliminating some bogus definitions. We can at least identify and exclude uses of the terms that are plainly inaccurate, inadequate, or misleading.

In the first place the concept of "cult" should not be equated with intensity of commitment or involvement, characteristics of the so-called high-demand groups, religious and secular. Nor is aggressiveness of proselytizing cultish in itself. Both qualities—in one form or another—are basic to authentic Christianity. For example, Jesus' call to discipleship is nothing if not "high demand," and His command to "preach the gospel to every creature" (Mark 16:15) certainly proposes ambitious evangelism.

These two elements are worth singling out because they have apparently been the basis for mislabeling some groups as cults. Two groups occasionally the target for such mistaken identification are Jews for Jesus and Campus Crusade for Christ. A recent article in *People* magazine (Dec. 4, 1978) implied that Campus Crusade staffers were at least semicultish, because of their complete commitment to the goals and activities of the group. Jews for Jesus, on the other hand, tend to irritate many people because they evangelize intensely—though politely—in many of the same locations frequented by the Moonie and the Hare Krishna recruiters: street corners, airports, and college campuses. In a recent article on the "Peoples Temple" (Oakland *Tribune*, Nov. 23, 1978) Senator S. I. Hayakawa mentioned Jews for Jesus in tandem with Moonies, Scientologists, and Hare Krishnas as being among those who "give up their families, their homes, their entire previous background, even their moral standards—to follow a new messiah of dubious credentials." The fact is that none of the above accurately describes the policy of Jews for Jesus. Senator Hayakawa has since graciously retracted his statement in a letter, which says, "It appears now that I was mistaken in naming the Jews for Jesus as a cult, and I apologize. The error was one of association."

In dealing with characteristics that mark a group as cultish, the problem is that neither a definition based on a standard of Christian orthodoxy, nor one based on techniques of behavioral manipulation and conditioning, is comprehensive enough. As Christians, we are, of course, particularly concerned with those seductive false prophets who use the name of God and Jesus Christ to lead astray, "if it were possible, . . . the very elect" (Matthew 24:24). At the same time we need to cultivate insight into cultic groups that apparently have little

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relationship to religion as commonly understood, and even less to Christianity per se. Perhaps the best approach is one that combines the two different standards without confusing them. (One book that has successfully done this is *Know the Marks of Cults.*)[2]

Qualities that can be recognized as cultic in terms of a *theological* definition (i.e., constituting deviations from orthodoxy) would include the following:

1. *A false or inadequate basis of salvation.* The apostle Paul drew a distinction basic to our understanding of truth when he said, "By grace are ye saved through faith; and that not of yourselves: it is the gift of God: not of works, lest any man should boast" (Ephesians 2:8, 9). Inasmuch as *the* central doctrine of Biblical Christianity is the sacrificial death of Christ for our sin, all cultic deviations tend to downplay the finished work of Christ and emphasize the importance of earning moral acceptance before Christ through our religious works *as a basis of salvation.*

2. *A false basis of authority.* Biblical Christianity by definition takes the Bible as its yardstick of the true, the false, the necessary, the permitted, the forbidden, and the irrelevant. Cults, on the other hand, commonly resort to extra-Biblical documents or contemporary "revelation" as the substantial basis of their theology (e.g., Mormons). While some cult groups go through the motions of accepting the authority of Scripture, they actually honor the group's or leader's novel *interpretation* of Scripture as normative (e.g., Jehovah's Witnesses, The Way International). Many groups use Biblical scriptures to validate their claims, but plainly jettison any concept of Biblical authority in favor of the pronouncements of a charismatic leader (e.g., Hare Krishna, Divine Light Mission, Peoples Temple). In authentic Christianity, at least, there is no prophet or guru who does not stand under the judgment of Scripture, as do the rest of us.

Nontheological standards will also be helpful in identifying cults. Most such guidelines concern techniques of acquiring and training converts, and include (among others) the following:

a. Isolation or "involvement" of the recruit to the point that the group controls all incoming information. One of the most critical stages of cultic conditioning requires that the new member be insulated from any opinion, data, or interpretation that does not conform to the group's purposes and understanding. It is one thing to withdraw from the world's turmoil for a period of reflection or training. It is an insidiously different matter to create fortified boundaries against the outside world that confine members and attack or threaten those who would leave.

b. Economic exploitation or an enslaving organizational structure. These factors are both obvious and self-explanatory. Ordinary gumption ought to steer one clear of a group in which the leaders live in luxury while the "lay" members toil to support the organization; likewise beware of arrangements that bind the convert to serve the group in return for "training" or other forms of advancement through the ranks.

c. Esotericism. This quality may well be the most damning evidence of all; unfortunately, it is the most difficult to document. "Esoteric" refers to a deliberately created gap between the truth about the cult that is given to the "inner circle" and a misleading image that is projected to the public at large. In cult evangelism, recruiters usually conceal either the identity of the group or its real purposes until the convert has become vulnerable or already has established a preliminary commitment. One legal scholar notes that "what is distinctive about this process is that, although the potential convert may be given a general idea of the activities and teachings that will be offered at the next stage, at no point early in the process is he given an opportunity to elect to embark on the entire journey."[3]

To bring the discussion back to the theological question, the element of esotericism is perhaps the clearest distinction between Christianity and cultism. There is nothing in the beliefs and practices of authentic Christianity that is not—in principle—discoverable to a modestly diligent inquirer through any public library. In contrast, the central core of cultic belief is—as a matter of principle—commonly hidden from the eyes of outsiders.

It should be understood, of course, that the above discussion does not pretend to be either exhaustive or conclusive. At best it is a tentative and preliminary effort to define an amorphous and marginally useful term. □

References

[1] John Lofland, *Doomsday Cult* (Englewood Cliffs, New Jersey: Prentice-Hall, 1966), p. 1.

[2] Dave Breese, *Know the Marks of Cults* (Wheaton, Illinois: Victor Books, 1975).

[3] Richard Delgado, "Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment," *Southern California Law Review* 51, no. 1 (November, 1977), p. 55.

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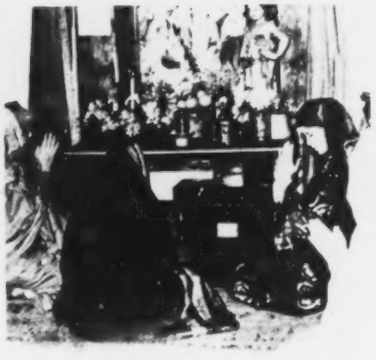
By Robert W. Nixon

CONGRESSMEN LOOK AT CULTS



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Senator Bob Dole (R.-Kan.) made himself perfectly clear. The "informal," "informational meeting" on those controversial "cults," or, as the Senator described them, the "new religions," being held in a Senate caucus room on February 5 was "not a Congressional hearing," "not an investigation," "not a public speechmaking forum," "not a debate between opposing points of view," and above all "not a 'media event.'"

But flanking Senator Dole were another Senator and four Representatives who cosponsored the meeting. Three more Senators dropped in during the morning to testify, observe, or ask questions.

And at least a dozen witnesses used the meeting as a forum to attack what they call the "cults," religious organizations such as the Unification Church (Moonies), the Hare Krishnas, and Scientologists. Five civil libertarians and the president of the Unification Church of America, added at the last moment to balance the witness list, urged the Congressmen to uphold traditional American standards of church-state separation and free exercise of religion as guaranteed by the First Amendment to the Constitution.

Even though protesting farmers grabbed most of the page-one headlines as they paraded their John Deeres and International Harvesters around the nation's capital, Senator Dole's "nonmedia event" drew at least fifteen motion-picture cameras and a score or more radio, television, newspaper, and magazine reporters. On the Capitol steps members of the Unification Church sang "We Shall Overcome" and waved signs proclaiming "Repeal the First Amendment: Elect Sen. Dole President."

Inside the meeting room, the Congressmen reaffirmed their support of First Amendment freedoms. Chairman Dole said: "Nothing in this meeting should give the slightest comfort to those who would weaken our religious freedom. Those liberties remain absolute and inviolable." But witnesses urging government intervention into the "cults" painted pictures of crimes and suppression of individual rights requiring government control or investigation.

Typical of those attacking "cults" was Robert Boetcher, formerly staff director of the House subcommittee on international organizations, which investigated alleged links between the Reverend Sun Myung Moon, leader of the Unification Church, and the South Korean Government's influence buying in the United States.

Boetcher said Moon's goal is to set up a global theocracy that will rule through an army of brainwashed servants, who have amassed a multimillion-dollar fortune. He spoke of involuntary servitude, millions of smuggled dollars, an attempted bank takeover, smuggled aliens, lying solicitors, high overhead in certain fund-raising activities, even infiltration of Congress.

Jim Siegelman and Flo Conway, authors of *Snapping*, took a "scientific view" of the controversial groups and criticized such concepts as "single-moment conversion" and "totally reorganized personalities" of those who accept new religions. Conway suggested that deprogramming should be recognized as a new and valued form of mental health therapy.

Controversial Ted Patrick, deprogrammer of 1,600 "cultists," said "cult" leaders are out "to destroy this country" by "destroying our ability to think" and by "making slaves." He urged the Congressmen to "do something to eliminate these cults."

Rabbi Maurice Davis, of White Plains, New York, described a cult this way: It is led by a dictatorial, often charismatic, leader. It consists of members who abdicate their right to say No. It teaches that "the end justifies the means, even theft and murder." It has unlimited funds. And it instills fear, hatred, and suspicion in its members.

Shouts of "Lies!" echoed through the Senate caucus room as Rabbi Davis, a longtime foe of the Unification Church, concluded his testimony. "How many Jonestowns must there be?" he asked. "I am here to protest against child molesters," he continued. "For as surely as there are those who lure children with lollipops in order to rape their bodies, so too do these lure children with candy-coated lies in order to rape their minds."

From another vantage point, Dr. James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs, pointed out that in colonial times Baptists—then classified as a "cult" by other religions—were jailed in Virginia and Massachusetts. He said "cult" is a pejorative word that has no place in American law.

Wood said religion in America should be based on the concept of voluntarism. "Anyone who knowingly joins and seeks to adhere to a religious group should not be inhibited as long as no crime is being committed," he said. "Religion and religious acts should be circumscribed only if government can show a compelling public interest and there is no less intrusive way of protecting that public interest." He said government should be required to show "probable cause" to believe a crime has been committed before government begins investigation of a religious group. Wood said the "mounting crisis in church-state relations centers on recent and repeated acts of government intrusion into the affairs of religious groups."

Herbert Richardson, professor of religious studies at the University of Toronto and a theological consultant to the Unification Church, told how as a boy he was warned about a certain "cult."

Richardson said his fundamentalist pastor in Ohio preached against a "cult" that based its teachings on superstitions and was headed by a man who wanted to rule the world. The "cult" supposedly engaged in illegal and subversive activities and taught its members that "the end justifies the means." The "cult" was said to have a huge financial empire, didn't believe in full financial disclosure, and even sought to infiltrate the government. It took teen-agers to secluded places for training in the "cult's" ministries. It even set up special schools so children would not contact the "enlightened" children in public schools. To top off the plot, said Richardson, a former priest of the "cult" told how good it was to have a free mind again—free from the teachings of Roman Catholicism.

The point of Richardson's story, of course, was that what appears to be cult to one person or religious group is true religion to another.

The testimony of many of the anti-"cultists" at Senator Dole's meeting should raise serious questions in the minds of every American who cherishes traditional concepts of free exercise of religion and separation of church and state.

Clearly, the call for elimination of the new religious groups is a call to do the constitutionally prohibited.

But more subtle were the attacks on "instant conversions" and "new personalities."

Is Christ Himself to be condemned? When Jesus saw Simon Peter and his brother Andrew fishing on the Sea of Galilee, He said, "Come ye after me, and I will make you to become fishers of men. And straightway they forsook their nets, and followed him" (Mark 1:17, 18).

And what about Saint Paul? Saul, the persecutor of early Christians, "made havock of the church" and had "men and women committed . . . to prison," perhaps for some first-century deprogramming (Acts 8:3). But the Lord appeared to Saul on the road to Damascus, and the anti-"cultist" Saul became Paul, a leader of the "cult" he once had persecuted—quite a change in personality and life style, and all instantaneously!

But what if crimes are committed in the name of religion? Fraud, theft, and murder are crimes, regardless of who commits them. And government should punish such crimes.

But government must always remember *first* the constitutional principles of church-state separation and free exercise of religion. Government intervention in religious affairs should be reluctant in the extreme—and then only as the least intrusive remedy to a particular problem.

And as for the new and controversial religions—the "cults"—perhaps Senator Edward Zorinsky (D-Neb.) put it best: "The right to hold unusual and unconventional religious beliefs in this country must be absolutely protected. It would, indeed, be ironic if, after fleeing Europe to escape religious persecution, our Founding Fathers gave birth to a new persecuting and intolerant nation." □

Robert W. Nixon is an attorney and associate editor of LIBERTY *magazine.*

TM Again Ruled Religious

Maharishi Mahesh Yogi turned his other cheek, but an appeals court said it had no trouble recognizing the same old Yogi.

On February 2 the United States Court of Appeals for the Third Circuit, sitting in Philadelphia, affirmed a lower court's ruling that had declared transcendental meditation (TM) to be religious in nature.

The original 1977 decision in *Malnak v. Maharishi Mahesh Yogi* had ruled that the teaching of TM and SCI (Science of Creative Intelligence, the TM philosophy) in public schools violated the establishment clause of the First Amendment. Taxpayers' money had been used to support the religious teachings and practices of the TM movement.

In his appeal Yogi argued that TM and SCI should be permitted in the public schools as "true science." But the presiding judge wanted to know what was scientific about the following, from TM's ceremony of initiation:

"Guru in the glory of Grahma, Guru in the glory of Vishnu,

"Guru in the glory of the great Lord Shiva, Guru in the glory of the personified transcendental fulness of Brahman, to Him, to Shri Guru Dev adorned with glory, I bow down."

In an evasive response, the maharishi's lawyer referred to an affidavit that stated that such ceremonies were sometimes used for secular occasions in India. The court later remarked that the effect of that affidavit was to "take a cow and put a sign on it that says 'horse'!"

If maharishi and the TM people decide to pursue the matter further, they will have to ask the United States Supreme Court for permission to bring an appeal there. The message from the courts, however, has been clear: TM is religious. Federal, state, and local officials can be expected to heed the courts' judgments and refuse any requests by the TM people to use taxpayers' dollars for TM programs.

Original plaintiffs in this action were a group of New Jersey parents and taxpayers, together with the Spiritual Counterfeits Project, an organization based in Berkeley, California. All were represented on the appeal. Additional defendants before the lower court included the U.S. Department of Health, Education, and Welfare, the New Jersey Department of Education, and several local school boards. None of these governmental defendants joined with the maharishi in his appeal. □

Inside the Fortress

By Mark Albrecht

Seelisberg is a nice little Swiss village, perched on a serene mountainside overlooking the Lake of the Four Forest Cantons. About a block up the road from the village itself sits the renovated Hotel Sonnenberg, which was purchased by the TM movement and now serves as the international headquarters of Maharishi Mahesh Yogi's "World Government of the Age of Enlightenment."

The huge building, which has been nicely restored, houses the elite of the TM movement, three hundred or so governors* of the world government, including the maharishi himself. The main lobby is open to the public; once inside, there are plenty of smiling, well-dressed men with trimmed hair to tell you all about TM. On a recent visit I noticed that most of the American women were wearing brightly colored silk saris, the native garb of Indian women. I asked my guide if this was because the maharishi is a Hindu teacher from India. "Oh, no," he replied, "TM is no religion at all. The saris are just comfortable, and very pretty, don't you think?" "Well, yes," I agreed, biting my lip. I asked if the maharishi was in. After considerable evasion, the guide finally said that he "wasn't sure." In any event, the maharishi comes and goes in style. Outside were two Rolls Royces and a classic Vanden Plas limousine; the maharishi also keeps a private helicopter nearby.

Speaking of flying, we got on the subject of the TM *sidhi* program, which theoretically enables a human being to levitate, fly, become invisible, walk through walls, have the strength of an elephant, et cetera. My guide assured me that it was all quite real, but that the general public would not be permitted to observe these things. He insisted that in the advanced stages of flying, one could "fly all the way to Zurich, or wherever." Does all this really happen? Well, one big tip-off is that the maharishi himself still uses the helicopter . . .

The other big pitch that I got from the TM'ers at Seelisberg concerned "Maharishi's Supreme Offer to the World." This offer is based on the *Maharishi Effect* ("named in honor of His Holiness Maharishi Mahesh Yogi, who predicted it as early as 1960"), in which the consciousness of a given geopolitical area is spontaneously raised when one percent of the population practices TM. The effect is claimed to be powerful enough to make nations invincible! This is accomplished by "disallowing the birth of an enemy" through the good vibrations of TM, which create love, harmony, good weather, stable economies, perfect health, eliminate all personal problems, and otherwise ensure that all Utopian values become a reality within "days or weeks."

All this may seem like so much self-deluded flimflam to the outside observer, but such is the governors' allegiance to the maharishi that if he says it is true, they accept it without further qualm or question. The movement has already demonstrated its willingness to put a certain amount of money on the line based on that assumption, as teams of advanced meditators have been sent out to soothe world trouble spots with their vibrations—part of a program to create world peace "by increasing the coherence and integrity of national consciousness in areas of the world experiencing dis-

*In TM parlance, a governor is defined as an inner initiate who has taken the advanced *sidhi* training and has supposedly learned to levitate, et cetera.

order." Special teams of twenty-four governors have been sent to Iran, Israel, and Central America.

Such trouble-shooting teams, however, are only part of a larger, strategically coordinated program that is based on the same grandiose assumption. My guide said that the world government had undertaken pilot projects in 108 countries around the world to bring about this blissful coherence and harmony. In these projects the TM organization is attempting to achieve a one percent meditation rate, based on current population figures. Once this is completed, world problems will be all but solved. The maharishi thus becomes the savior of the world and transcendental meditation becomes his sacrament.

The TM magazine *World Government News* puts it this way:

"Maharishi's teachings have brought on the Age of Enlightenment—optimism and generosity are inseparable parts of his behavior. In pointing at the crisis he is acting out of compassion to wake us up from our stupor of struggle and suffering so that we might take advantage of the formula that he has made available to us to eliminate every shadow of crisis from our personal lives, and in the same stroke create an ideal society and an invincible nation." □

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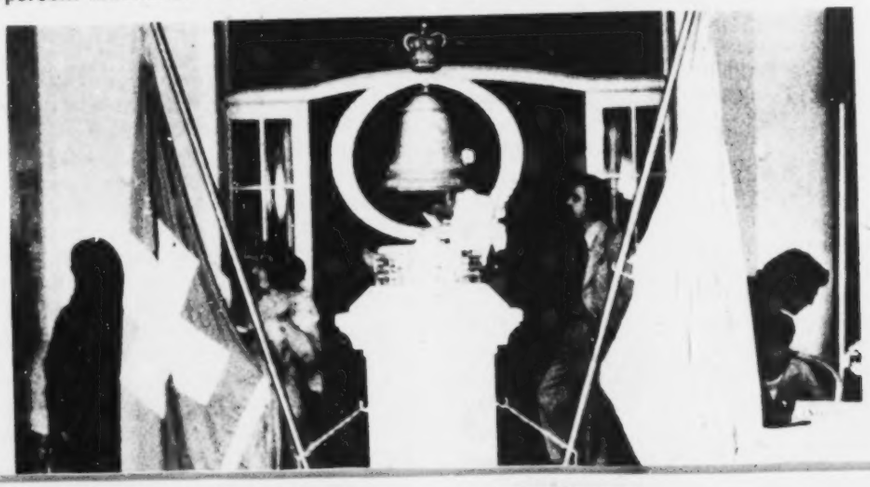
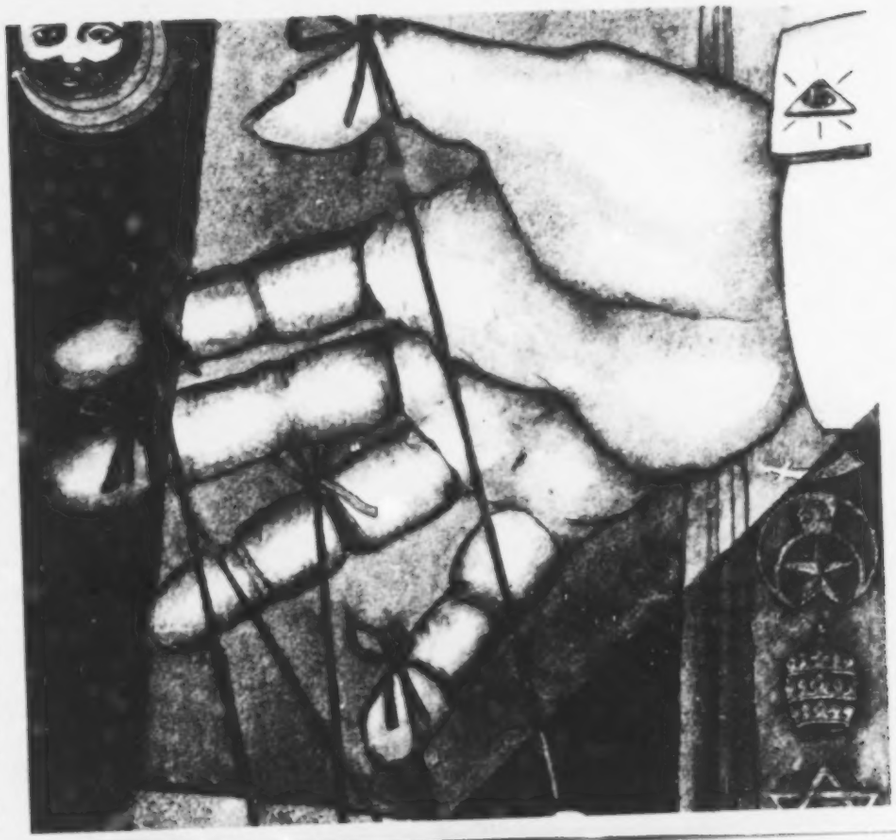


The "Bell of Invincibility" in the main lobby at Seelisberg headquarters is believed to be "the vibrational harbinger of the Age of Enlightenment."

Maharishi's view from his headquarters. Despite his gift of levitation, he keeps a private helicopter nearby.

Who runs Jimmy Carter? Who is the REAL President? These and similar questions have been asked recently by articles in magazines known more for their centerspreads than their profundity. Their answers: "A powerful international study group [the Trilateral Commission] with only the most limited taste for democracy and the blessing and backing of David Rockefeller." "A private club of billionaires and their advisers [again the TC], dedicated to running the world."



Behind this front—and other conspiratorial groups—we are told by many sources, is the elusive Illuminati, an organization blamed for such affairs as the French Revolution, the vice (and funding) of Communism, and even the crucifixion of Christ!

LIBERTY asked Dr. Walter C. Utt, chairman of the department of history at Pacific Union College, Angwin, California, to unravel the myths and legends surrounding this shadowy organization. We hope you will agree it was a worthwhile task.

—Eds.

Illustrated by Bobb Tull

Illuminating the Illuminati

By Walter C. Utt

I

A Welshman with whom I lunched last summer was critical of the Welsh nationalists who deface roadside signs that have English spellings or who refuse to answer a question if asked in English. He said there was no case known where one of these purists had refused a British pound note, even though it is inscribed in the English language! Of the same breeding stock are the conspiracy buffs who inform us that the symbolism of the Great Seal of the United States (see reverse side of a dollar bill), a five-pointed star (see the United States flag), the serpent-entwined caduceus (see a physician's car in a no-parking zone), or the letter "S" (see your local Safeway supermarket), are Masonic or, worse, demonic symbols. What one is supposed to do (except to yawn) is not clear. Refuse dollar bills? Refuse a doctor's treatment? Or what?

Our Founding Fathers, many of whom were Masons and rationalists, were influenced by Masonic imagery. The imagery of construction seemed appropriate for the Great Seal of a new nation and its hopeful political experiment. Symbols we live by. But symbols change meanings and often do not say the same thing to everyone everywhere. A symbol only *represents* reality; it is not *the* reality. But conspiracy buffs tie together a variety of symbols from several thousand years of world culture and claim evidence of a worldwide secret conspiracy. One of the most long-lived conspiratorial organizations, we are told, is the Illuminati, a group alleged to have been manipulating world affairs for some centuries.

In a time of distrust of established institutions it is not to be wondered that such a belief flourishes. When matters do not seem to be going well, many anxious folk are susceptible to bizarre "new light." Two powerful appeals enrich promoters of such fads: (1) "I am going to give you the inside dope, which not even the regular members of Organization X know about!" and (2) "I am going to scare you spitless—which you will rather enjoy and which will confirm what you have suspected all along about the Establishment." Perhaps a conspiratorial world view comes from feelings of helplessness in a messy world with which leaders seem unable to cope. This world *is* an increasingly frightening place. To blame a conspiracy simplifies matters and also relieves one (or one's country or type of people) of responsibility for the predicament we are in.

Agreed, the borderline between fact and speculation is not easily determined. Fads, such as the occult, UFO's, or recurrent legends such as the Illuminati, may start from some point of fact, but the kernels of truth are so small and the chaff piled so deep, one risks discrediting himself entirely to espouse them. Let us look at how the Illuminati story originated.

A Time Not Unlike Our Own. The late eighteenth century was a time not unlike our own. Accepted political and religious values were being challenged. The Altar-and-Throne combination was being undermined, particularly in Catholic countries. The idle and restless, the "beautiful people," flocked to each fad, and the hitherto rational tone of the Enlightenment was weakened by a wave of romanticism and "sensibility"—Rousseau, so to speak, reacting against Voltaire.[1] The spiritual void was filled by anti-intellectual excesses such as mesmerism and occultism. In no place did this kaleidoscopic coming and going of clubs, societies, and movements, with shifting in and out of one group to another, go further than in the German states. Secrecy, needed to reduce harassment by police and censors, strengthened a predilection for symbolism, mumbo jumbo, and the bizarre.

In the strongly clerical and conservative state of Bavaria, one of these radical societies flourished at the Jesuit university of Ingolstadt. Adam Weishaupt (1748-1830), a disgruntled professor of canon law, founded the Illuminati ("the enlightened ones") on May 1, 1776. By no means was this the first time this immodest title had been used by a dissident group.[2] The Illuminati program was neither very different in aim nor membership from numerous other groups—long on naive and utopian talk about moral and social regeneration but short on concrete programs. Its most clear-cut concept was a fierce hatred of clericalism as a perversion of the pure principles taught by Christ.[3]

A Masonic dropout, Baron Adolf von Knigge (1752-1796), from Hanover, seems to have provided the organizing ability; and the Weishaupt society enjoyed notoriety as "radical chic" in Germany at the turn of the 1780's. Borrowing ritual and pretentious nomenclature from the Masons, with whose rationalistic wing they momentarily affiliated, the Illuminati attracted mostly university students and junior officials exasperated against clerical regimes they saw as defending superstitution and oppression. Most drifted off shortly, finding little that was original or compelling in the windy and inchoate ruminations of their chiefs.

Weishaupt and Von Knigge soon quarreled, and the society began to disintegrate. Frightened by delations of exmembers, some indiscreet boasting, and prompted by the Jesuits, Elector Charles Theodore took fright and outlawed the society in 1785. The fame of the Illuminati therefore was mostly ex post facto.[4] Both principals had to flee Bavaria, and from his obscure exile Weishaupt wrote long and tedious rebuttals to the attacks made on him and his defunct movement.

A Handy Scapegoat. As early as 1790, some French emigrés were asserting that the Revolution was caused by a Masonic plot. A well-developed taste for the marvelous existed, as it does today, and "romanesque and facile" explanations were much more palatable to losers than was factual analysis.[5] War came in 1792. As French armies began to win, anxiety increased in neighboring lands, for successful armies export ideas more effec-

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tively than plotters.[6] German counter-revolutionaries long had a campaign against freethinkers, Masons, and philosophers. Now, joined by refugee clergy and aristocrats from France, Lutheran and Catholic pietists, ex-Masons, and disbanded Jesuits collaborated to defend the emotional, mystical, and sentimental extremes of German political reaction.[7] Rosicrucians, deep into symbolic and occult excesses, were particular foes of all rationalists. A noisy press and pamphlet campaign continued through the 1790's, aided by surviving German princes and even by secret funds from the British government.[8]

The Illuminati offered a handy scapegoat when the campaign gravitated toward conspiracy theories.[9] Since many of the emigré aristocrats were themselves Masons, it was necessary to find a particular sect; and the idea that Bavarian Illuminati had seduced French Freemasonry was in print by 1795.[10] With naval mutinies and a bloody rising in Ireland, British conservatives were susceptible to the hysteria of French refugees in their midst. The ex-Jesuit Abbé Barruel (1741-1820), already known as a polemicist against encyclopedists, *philosophes*, and the French revolutionary regime, reached London in 1792 and published his exposé in 1797. German and American editions swiftly followed.[11]

In his classic treatise on conspiracy, Barruel denied the unforeseen. All was "premeditated, prearranged, resolved, and decided upon." For twenty years, three hundred thousand "adepts" had been at work. The present revolution was only the beginning of the universal dissolution the sect planned. He posited three stages: (1) a conspiracy against Christianity by the *philosophes*, (2) a conspiracy against thrones by Freemasons, (3) a conspiracy against property and social order by the Illuminati, "sophists of impiety and anarchy." Therefore, encyclopedists + Masons + Illuminati = Jacobins. The Jacobins, he claimed, "threw off the mask" July 14, 1789—a notable distortion of fact!

Barruel did list some actual agitators, but overlooked so many in various countries that it is obvious he drew mostly from readily available published sources. He correctly saw the attack on the Old Order as international. "The sect," he asserted, "first announced itself in America, with the first elements of its code of equality, liberty and sovereignty of the people." Significantly, in the English and American translations, the words "in America" were omitted! Palmer suggests that "even for conservative English-speaking persons, it was simply not believable that the American Revolution had been brought about by a sect of adepts, and they might conclude that Barruel's whole thesis was unsound." The ultimate aim of the conspiracy, said Barruel, was to replace God by man, but good government requires organized religion, specifically the pre-1789 combination of Altar and Throne.[12]

It was coincidence, said Barruel, that the Scot John Robison also published his weaker and less skillful treatise in 1797.[13] He was a noted scientist but a political naif with "a total lack of critical intelligence." His laborious data scarcely supported his fevered conclusion that the Illuminati made and directed the French Revolution and were "one great and wicked project fermenting and working all over Europe." Mme. Tallien's inadequate public attire in 1793 ("bared limbs") he traced to Weishaupt's promotion of immorality. Though once a member of a British lodge, he identified the Illuminati with Masonry. Continental lodges he saw as different and more malignant, and heavily infiltrated by the Jesuits! An appeal to Britons to resist seductive doctrines of irreligion, corruption, sensuality, and the destruction of property rights occupied 150 pages.[14]

Two Improbabilities. The attractiveness of the Barruel-Robison thesis rests on two improbabilities. The first was the alleged survival of the society after its dissolution. The fragments of data are hardly coercive either way, but more important, there is simply no indication that anyone associated with the group was affected in his later actions by anything specifically attributable to his contact with the Illuminati.[15] Opposing the Catholic Church, or "superstitution," or autocratic or inefficient government was so general among European bourgeoisie that it passes belief that similar notions advocated by the Illuminati were that different or compelling.

The second improbability was that this German group—however gratifying the notion might be to Germans—could have set up and administered the French Revolution and so effectively coordinated hundreds of thousands of actors that they were all unaware that they were being manipulated. Few eras of history have been more relentlessly combed over by all parties in that contentious, literate, and prolix generation. Besides, a tidal wave of memoirs and histories, police and military records, are now open. Odd that no one suspected all this was going on except a few polemicists *doing their writing in countries at war with France!* Even if one accepts the idea that Masonic lodges somehow transmuted into Jacobin clubs, there remained many inharmonious varieties of Masonry. And certainly there was much more to the French Revolution than Jacobinism. It takes a very considerable leap of faith to think the Illuminati made much difference.

The Masonic lodges . . . provided a kind of international network of like-minded people. Their existence facilitated the circulation of ideas. But the lodges took no orders from any headquarters, their members never acted as a group, and their very taste for elaborate mystification made them innocuous if not ridiculous in real political life.

Nothing more conspiratorial than the Freemasons has ever been discovered. Belief in a secret, concerted, underground international revolutionary movement, as developed by the French Barruel and the Scotch Robison, and advanced in America by Jedidiah Morse, is an item not in the history of fact but in the history of counter-revolutionary polemics.[16]

As Alice was told in *Through the Looking Glass*, one should try to believe at least one impossible thing each day before breakfast.

II

The Illuminati entered American political lore in 1798, during the XYZ* crisis with France. By happy chance, Robison's collection of *non sequiturs* came to the attention of Jedidiah Morse, a Boston pastor. The idea of a worldwide plot summed up so exactly his view of the parlous state of the nation and the danger to Christian America, that Morse launched his attack on the society in his Fast Day sermon of May 9, 1798, using as his text 2 Kings 19:3-4. The established church had been on the defensive against dissenters and deists for years, but especially since the American Revolution. Federalist New England feared the advent to power of Jefferson's pro French Republican party in the elections of 1800. These Congregationalist pastors, mostly Federalists, could not imagine a world without a state church to support virtue. At first, Morse had approved of the French Revolution and even the Reign of Terror as bringing deserved woe on the papacy, but he shifted after 1795 and saw the Revolution as infidelity incarnate. America's situation was already almost beyond remedy. "Atheistical, licentious, disorganizing principles" were everywhere. "God has a controversy with this nation."[17]

The State of the Nation. One must remember the helpless position of the new American republic, buffeted in the struggle between France and Britain that was to go on with only brief interruption from 1792 to 1815. American public opinion yawed violently in the 1790's. The arrogance of Genêt, the French envoy in 1793, embarrassed the Jeffersonians; then the Jay Treaty, surely one of the most unpopular in American history, swung the public violently against the Federalists. The XYZ Affair and the bullying by the French reversed opinion again, and war was barely averted in 1798 by President Adams, though at some cost to his position in his own party. Then the Federalists overreached themselves by attempting to muzzle the press with the Alien and Sedition Acts.

Such was the state of the country during the presidency of John Adams—divided by interminable contention, bewildered by accusation and counter accusation, flooded by propaganda, with its citizens appealing to foreigners in their disputes with each other, beset by laws against sedition and their partisan enforcement, . . . carrying on actual hostilities with France at sea, and with important men clamoring for all-out war against that infidel republic, . . . and alliance solicited with Great Britain.[18]

New England pulpits rang with charges of atheism and infidelity against the Republicans and their Jacobin friends, but, after all, the jeremiad was a long-established Puritan sermonic form.

Morse announced the terrifying plot in his sermon and elaborated details in a printed version. He noted that "reading societies" had indeed existed in some American towns. Robison's book stressed the Masonic connection, but Morse prudentially muted the sound of his trumpet on this point, showing he well knew what he was about, for most of the leaders of his own party were Masons—Washington, Hamilton, Jay, Revere, to mention a few. (Once Morse's critics got hold of the Robison book and noted Morse's omissions, he too had to develop a distinction between better and worse Masons.) Other Federalist clergy joined in, notably Timothy Dwight, of Yale. Said Dwight:

"The sins of these enemies of Christ, and Christians, are of numbers and degrees which mock account and description. All the malice and atheism of the Dragon, the cruelty and rapacity of the Beast, and the fraud and deceit of the false Prophet, can generate, or accomplish, swell the list. . . . Shall we, my brethren, become partakers of these sins? Shall we introduce them into our government, our schools, our families? Shall our sons become the disciples of Voltaire, and the dragoons of Marat; or our daughters the concubines of the Illuminati?"[19]

Tying the conspiracy in with the Whiskey Rebellion in Pennsylvania, Abiel Abbot, of Haverhill, said it was now "generally believed that the present day is unfolding a design the most flagitious, and diabolical, that human art and malice have ever invented. Its object is the total destruction of all religion and civil order."[20] Printed sermons and newspaper articles in this vein abound, but one admirer of Theodore Dwight—brother of Timothy—got to the heart of the matter when he wrote that Dwight convinced him that Jefferson "is the *real Jacobin*, the very child of *modern illumination*, the foe of man, and the enemy of his country."[21]

The Counterattack. Peevish critics began to demand specifics and proof. Had anyone ever seen an Illuminatus in America? What evidence of their handiwork could anyone point to? Morse returned to the attack in his vehement sermon of November 29, 1798. Privately, he tried to get information on members of the Masonic lodges with French connections, but was disappointed to learn that they were all considered sound and respectable citizens.

Robison's book was soon reprinted in New York and elsewhere and enjoyed

(Continued on page 26)

* In 1798 by orders of the French Directory, one thousand American vessels had been stopped on the high seas for examination. President Adams sent three commissioners to negotiate a treaty which would do away with this annoyance. The commissioners were met in France by three agents, who demanded a large sum of money before the Directory would receive the commission, and also notified the commission that France would expect a loan from the United States if satisfaction of any other kind was to be given. The commissioners rejected this and were ordered out of France. Their report was published at once in the United States, and in it the French agents were labeled X, Y, and Z. The United States increased its army and navy, and hostilities were actually begun when Talleyrand disavowed any connection with the agents and agreed to receive any minister the United States might send.

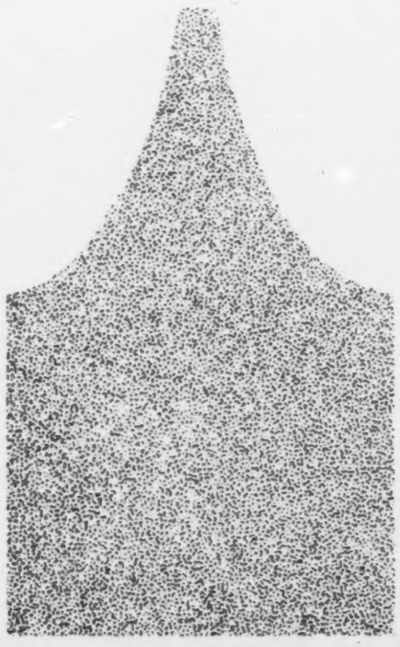
History Backstage

By O. J. Mills

In no place in the Bible, or in history, are truth and error brought into closer proximity than in Revelation 13:11: "I beheld," said John, "another beast coming up out of the earth; and he had two horns like a lamb, and he spake as a dragon."

A lamb and a dragon? Could more paradoxical symbols be used? And yet no combination could more accurately focus man's attention upon the final phase of the cosmic warfare between tyranny and freedom.

"He had two horns like a lamb." Throughout the book of Revelation, Jesus is pictured as a lamb. John beholds Him first as "a Lamb as it had been slain," "in the midst of the throne."[1] That is, He is in the very center of the universe, surrounded by "every creature which is in heaven, and on the earth, and under the earth, and such as are in the sea."[2] John sees Him again as the returning Lamb coming in the clouds of heaven.



In one or the other of these roles Christ is pictured repeatedly in John's "Revelation of Jesus Christ."[3] Thus John focuses our attention on a power that has characteristics similar to those of Christ. But the lamblike beast speaks "as a dragon." John identifies the dragon as "that old serpent, called the Devil, and Satan, which deceiveth the whole world."[4] We find him lifting his ugly head time after time as the great conflict between truth and error is delineated by the revelator.

The dragon is discovered in some of the most deeply spiritual settings. John first glimpses him in heaven itself, perfect from the day of his creation,[5] cherishing a covetousness that breaks into open rebellion.[6] He is "cast out into the earth" with "his angels," who sided with him in the conflict.[7]

Unless we acknowledge with the apostle Paul that "we are not contending against flesh and blood, but against the principalities, against the powers, against the world rulers of this present darkness, against the spiritual hosts of wickedness in the heavenly places,"[8] life is only a puzzle and man merely a shadow on the darkening landscape of time; and H. G. Wells was right when he said, "'The stars in their courses have turned against man, and he has to give place to some other animal better adapted to face the fate that closes in.'"[9]

The wisdom of the Bible stands forth in sunny outline, bold and clear, when we study man's shallow records under the penetrating revelation that two great supernatural agencies are contending for the supremacy of the world. All history, religious and secular, takes on new significance, and all life new meaning, when we permit the Bible to draw aside the curtain, allowing us to observe two great spiritual kingdoms influencing the movements of earth, the growth of nations, the rise and fall of empires, the destinies of individuals. Only through perceiving events backstage can we make decisions decisive enough to align ourselves positively with the ultimately triumphant kingdom of light.

The dragon, "that old serpent, called the Devil, and Satan," is always pictured as an avowed foe of the Lamb, but not always as an open enemy of the truth. He whom Jesus saw "as lightning fall from heaven"[10] usually poses as an ambassador from heaven. He works his way into the highest places of worship, where he may more subtly pervert truth

Unless we view history from the vantage point of revelation, life is only a puzzle and man merely a shadow on the darkening landscape of time.

into error and then more authoritatively palm off the counterfeit for the genuine.

Paul categorically states, "Satan himself is transformed into an angel of light." [11] Posing as an apostle of Christ, he chooses men to represent him in civil and religious offices who have been deceived into believing that they represent the Lord of heaven. Transforming unconverted men into "ministers of righteousness," [12] he has founded great systems of government and religion in the name of Christ, systems that have deceived multitudes into believing they were promoting freedom only to discover too late they had been used as instruments of tyranny.

The last book of the Bible, "The Revelation of Jesus Christ," has been given to unmask Satan by uncovering the underlying principles that have inspired dictatorships and authoritarianism through the ages.

Satan would lead us to believe that all worship is good; that all forms of religion are of God, shaded in various ways, to meet the varying temperaments of men. Even the most primitive forms of heathen worship, it is often taught, have their virtues.

Jesus acknowledged that there are various ways that men may worship Him, but notice His conclusion: "*In vain* they do worship me, teaching for doctrines the commandments of men." [13]

Revelation 13:4 reveals that multitudes, thinking they were worshiping God, actually worshiped Satan at the false shrine of a counterfeit system of religion: "And they worshiped the dragon which gave power unto the beast."

A further evil of vain worship often is its intolerance and persecution of those who would choose to worship differently from the established form. Early in history we observe the operation of this principle. Two religious men, both worshipers of God, present themselves at the altar, each with his offering. Cain worships according to his own view of how the offering should be presented. Abel follows the revelation given by God. Abel's humility and submission to the divine will found acceptance with the Lord, "but for Cain and his offering he had no regard." [14] Though Cain could find no justification for his adaptation of divine revelation, he persisted in his perversion of worship and established the pattern of history: "Cain said to Abel his brother, 'Let us go out to the field.' And when they were in the field, Cain rose up against his brother Abel, and killed him." [15]

Jesus spoke of this principle of intolerance when He said, "They shall put you out of the synagogues: yea, the time cometh, that *whosoever killeth you will think that he doeth God service.*" [16]

The apostle Paul acknowledged of his religious experience before his conversion: "I verily thought with myself, that I ought to do many things contrary to the name of Jesus of Nazareth. Which thing I also did in Jerusalem: and many of the saints did I shut up in prison, having received authority from the chief priests; and when they were put to death, I gave my voice against them. And I punished them oft in every synagogue, and compelled them to blaspheme; and being exceedingly mad against them, I persecuted them even unto strange cities." [17]

It is Satan's avowed purpose to get men to violate the eternal principles of righteousness. What he cannot accomplish otherwise, he seeks to achieve through force and tyranny. It is his strategy to gain control of leaders of church and state and through them to enforce his will upon the masses by threat, intimidation, and abuse.

Those who firmly stand true to principle stir the depths of the dragon's wrath, and he sets out to exterminate them. So has it been through the centuries. So shall it be in the remnant of time. Says John, presenting the church under the symbolism of a pure woman, as she is consistently portrayed in prophecy: "The dragon was wroth with the woman, and went to make war with the remnant of her seed, which keep the commandments of God." [18] □

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[7] Revelation 12:7-9; see also Luke 10:18.
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[9] H. G. Wells, *Mind at the End of Its Tether*, as quoted in the Chicago *Sun*, Nov. 7, 1945, p. 3.
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[11] 2 Corinthians 11:14.
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[13] Matthew 15:9.
[14] Genesis 4:5, R.S.V.
[15] Genesis 4:8, R.S.V.
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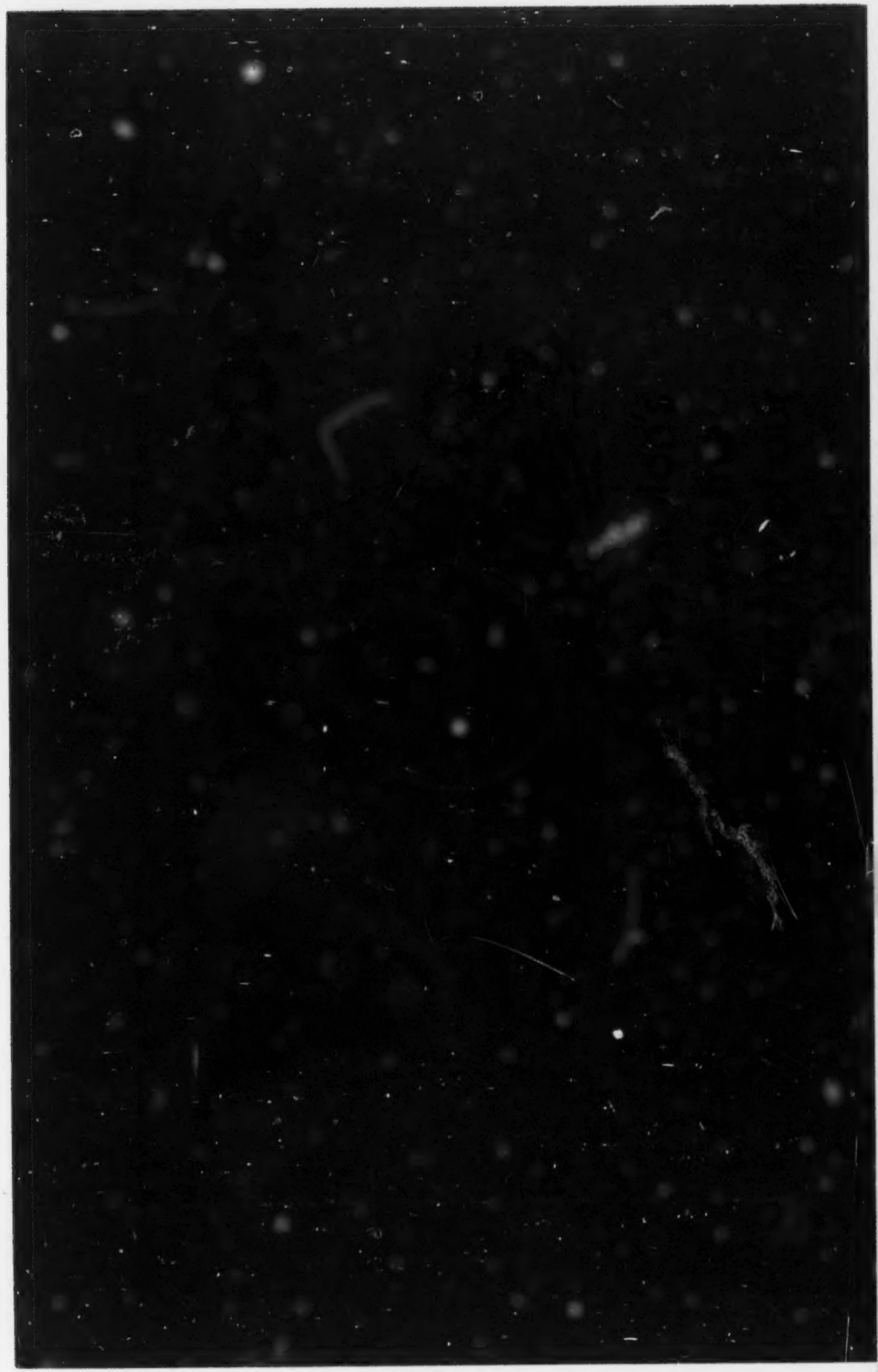

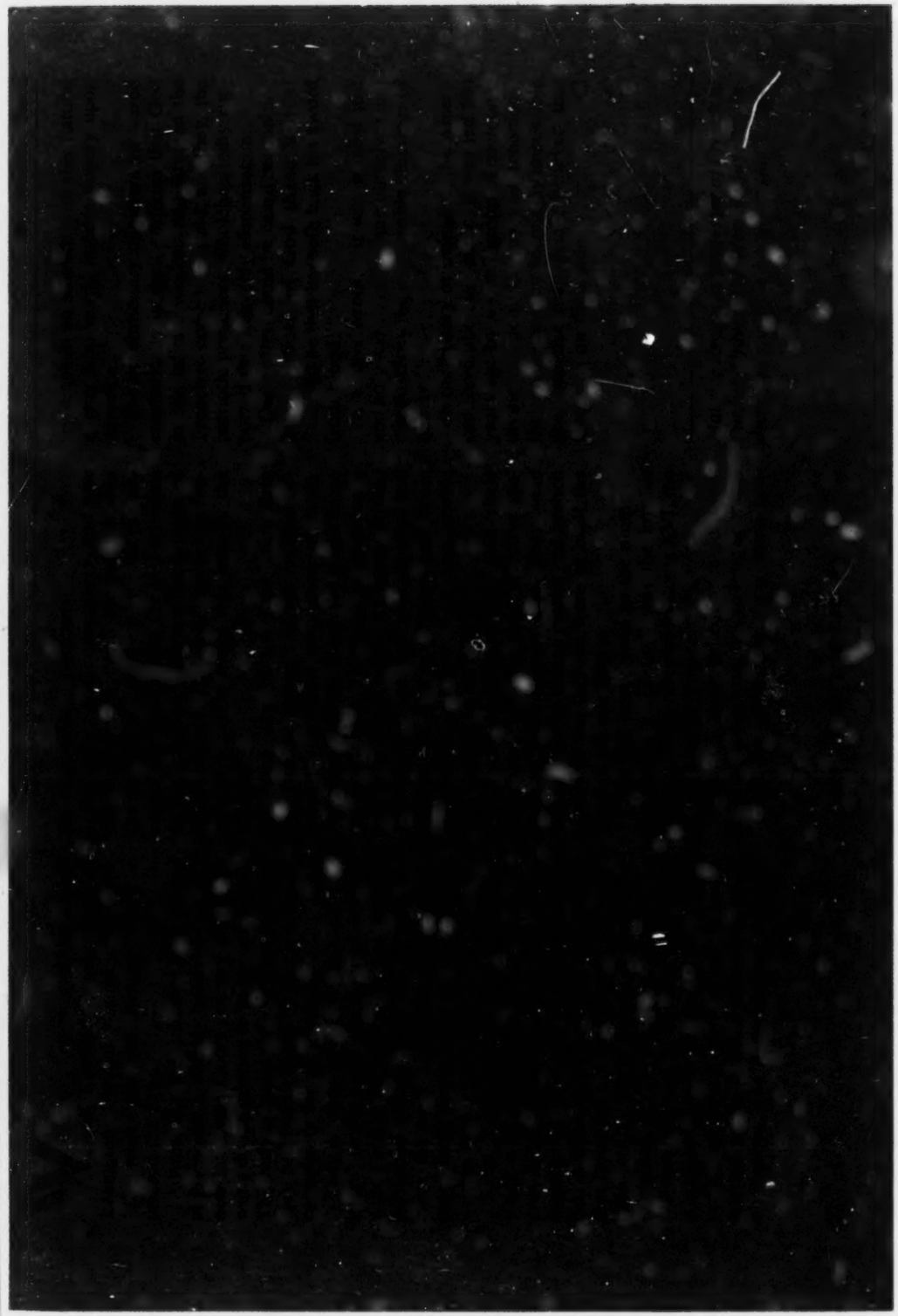

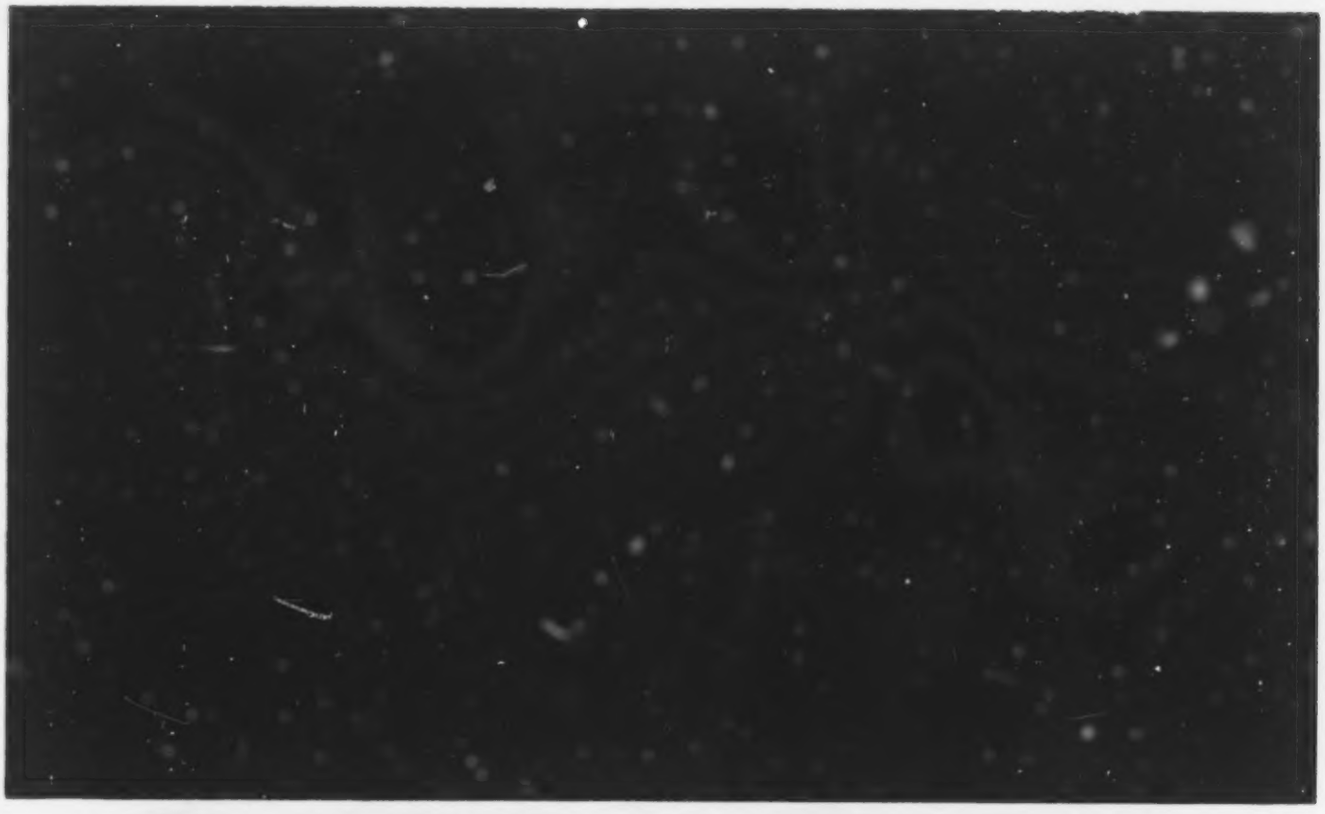

OF TARES AND HERETICS

A parable from the lips of Jesus has strongly influenced the growth of religious freedom.

By S. J. Schwantes

It is a frosty morning of May in Coire, a Protestant village in the Grisons, Switzerland. The year is 1570. A bookseller under suspicion of heresy is brought before the Council.

"What is your name?" asks the presiding officer gruffly.

"George Frell, your grace."

"Mr. Frell, we are informed you haven't been to church lately."

"No, your grace."

"Why not?"

"Methinks I will go hear the preacher, if he preaches according to the Word of God."

"Mr. Frell, we understand your children have not been baptized."

"That's true, your grace."

"You know that is a serious offense."

(The air in the poorly lit chamber is tense.)

"I beg your pardon, your grace, to declare that in my opinion the baptism of children is not essential to salvation."

The counselors gasp in dismay. But none dare to pronounce the fateful word "Anabaptist."

"What books do you sell in your library?"

"Books that enlighten the spirit and lift the soul. Is anything wrong about selling books?"

"Wrong . . . well, no," mutters the president, "but . . . we are informed you have the damned books of Menno Simons and Schwenkfeld."

"Right, your grace. But such books can harm no one."

The Council knows its duty, but it hesitates. There is such a transparent sincerity about this Mr. Frell. Servetus had been burned to death in Geneva just a few years before, accused of heresy. And in humanistic Basel, the body of David Joris had been exhumed from an aristocrat's tomb in the church of Saint-Leonard to be burned in a typical *auto-dafé*, after his identity as an Anabaptist had been established.[1] But the consciences of Christian people are smarting at the incongruities of putting people to death in the name of religion.

Public sympathy is with Mr. Frell. The Council would grant him a delay, were it not for the vicious attack of the local preacher, Tobi Egli. If the Council refuses imprisonment, he will press for

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banishment of the heretic. The eloquence of Egli carries the hesitant members of the Council.

"Mr. Frell, be it known to you, that since you refuse to abandon your error, this Council solemnly revokes your permit to live in Coire. You shall depart from this town by tomorrow, so that your pestilential heresy may not defile the religious honor of this most Christian community."

Happily for Frell, another preacher in Coire, Jean Gantner, who had imbibed the teachings of the great humanist Sébastien Castillion in the University of Basel, felt it his duty to defend Frell. The debate, which seemed to have ended with the departure of Frell, took a new turn in the annual synod of June, 1570. Because anti-Trinitarian doctrines were being propagated by Italian refugees, the zealous Egli convinced the synod and local authorities to publish a decree demanding that inhabitants of the three counties of the Grisons choose between the Catholic and the Reformed faith. Should they opt for the Reformed Church, they must submit to the confession of faith of the synod of Coire and renounce every opinion suspected of Anabaptism or Arianism.

Contrary to expectation, the decree provoked widespread protests in Coire and elsewhere. The challenge to religious freedom in his parish was courageously taken up by Gantner. On October 7, 1570 he preached a sermon based on the Parable of the Tares (Matthew 13), that he developed in a masterly way, arguing for absolute tolerance of religion. To the zealous servants indignant at the presence of tares among the wheat, Gantner pointed out, the householder replied: "'"No, lest in gathering the weeds you root up the wheat along with them. Let both grow together until the harvest"'" (Matthew 13:29, 30, R.S.V.).

The effect of this sermon and others, through the winter, was enormous. Even the inquisitorial Tobie Egli, whose testimony is suspect, had to admit: "Most of the listeners deceived by a false appearance of merciful charity, began to defend the Anabaptists as true saints." To this he bitterly adds: In a little time "he gained so well the spirit of the simple that in town nobody dared to speak against the heretics."[2] The debates were taken up repeatedly in the synod of Coire, but public opinion had so changed that Tobie Egli and the synod were unable to obtain either the revocation of Gantner or the expulsion of the bookseller Frell. Be it said to the honor of Egli that when the plague raged in Coire in 1574, he died rendering service to the sick and the dying.

The parable of the wheat and the tares, so ably expounded by the resourceful Gantner, became one of the classic texts in the controversies of the Reformation. In it the champions of religious toleration found a priceless arsenal. Its simple truths cut their way to the conscience of men everywhere until the principle of toleration gained recognition as one of man's innate rights.

John Gantner may have learned of the value of the parable from the writings of Sébastien Castellion, a French humanist, who had accepted the reformed teachings. After a brief stay in Geneva, where he was principal of the City College, he moved to the more congenial Basel, where he became professor of Greek at the university (1553).

Earlier, while eking out a miserable existence as a proofreader, Castellion published a translation of the Bible in Latin. In the preface, dedicated to the young king of England, Edward VI, Castellion expressed for the first time his ideas concerning toleration toward heretics. He too found profound arguments for his thesis in the Parable of the Tares:

"Shall we be bloodthirsty and murderers because of the zeal we have for Christ, who so that the blood of others be not shed, shed His own? Because of zeal for Christ, shall we root up the tares, when He, in order that the wheat be not rooted up, ordered that the tares be left till the harvest? Because of zeal for Christ, shall we persecute others, when He commanded that if someone smites our right cheek, we should offer to him the left?"[3]

The spirit of persecution, says Castellion, is a foolish presumption on the part of man. Punishment belongs to God:

"Let us wait for the sentence of the just Judge and let us beware of condemning others . . . Let us obey the just Judge, and leave the tares until the harvest . . . The end of the world is not yet come, and we are not angels, to whom this charge is committed."

The most important book of Castellion carries the title *Concerning Heretics*, and was published in Basel in 1554. Among his authorities Castellion quoted Conrad Pellican, professor of Hebrew in Zurich, who had written a commentary on the New Testament. In his exposition of Matthew 13 Pellican had written:

"The servants who want to gather the tares before time are those who esteem that the false apostles and heretical teachers should be punished by the sword and by death. The householder does not want that they be put to death, but he spares them in the hope they will mend and be converted from tares into wheat. If they do not mend, let them be reserved to their judge who will punish them."[4]

Castellion's call for religious toleration didn't fail to draw thunderbolts from the two paragons of religious absolutism in Geneva: John Calvin and Theodore Beza. The same year, 1554, Beza composed his replica, *Concerning the Authority of the Magistrate to Punish Heretics*, published first in Latin and a few years later in French. In it he thunders:

"Beware, beware of this false charity . . . which to spare I don't know how many wolves risks to endanger the whole flock of Jesus Christ! Know, all ye faithful magistrates . . . in order to serve God well, who put the sword in your hand to keep the honor and glory of His majesty, strike valiantly with the sword for the safety of the flock against all these monsters disguised in men."[5]

In *Concerning Heretics*, Castellion also quotes Martin Luther's comment on the parable of the tares found in his book *Concerning the Authority of the Magistrate* (1523). From the parable, the German reformer draws a lesson he himself forgot in the aftermath of the Peasant's Revolt:

"We see by this text the great and enormous folly which we have practiced till now, constraining the Turks to embrace the faith by means of war, burning heretics and hoping to convince the Jews by fear of death and other injuries. Doing this, we want with all our might to root up the tares as if we were the ones having power over the hearts and spirits of others to make men turn to justice and

goodness!"[6]

The seminal influence of the Parable of the Tares may be attributed to Erasmus himself, the prince of humanists (1466-1536). In his polemics with the reactionary Noel Beda, syndic of the faculty of theology of Paris, and with the Spanish monks who masterminded the Inquisition, Erasmus finds no better arguments than the ones the parable furnished him.[7]

Erasmus was acquainted with the medieval commentaries on this parable. Some authorities explained that it was necessary to tolerate the tares until the Church was well established, but then they might be destroyed. St. Thomas Aquinas believed that the tares might be rooted up if they were so distinct from the grain that there would be no mistake. Erasmus answered by saying that he didn't feel authorized to introduce into the sacred text such worldly explanations. To him the teaching of the parable indicted the Inquisition.

The influence of the parable spanned the whole century of the Reformation, and certainly inclined consciences toward respect for religious convictions. But many would still suffer imprisonment or exile, when not death itself, before divine light dissipated the miasma of religious absolutism.

One such victim was Bernardino Ochino, born in Sienna, Italy, in 1487. Appointed in 1538 General of the Order of the Capuchins, he became known as the greatest preacher in Italy. Soon after, he adhered to the Reformation and fled to Geneva in 1542. He married the following year, and later lived in Zurich as the pastor of the Protestant refugees from Locarno. There in 1563 he published his *Dialogues*, which won him the wrath of the magistrates. Without even giving him the benefit of a public audience, the Senate of Zurich ordered his banishment. He appealed, but the subsequent inquest only revealed more clearly his dogmatic errors.

In midwinter, Ochino was an expatriate. He went to Basel, but Basel refused asylum. After a stay in Germany, he tried Poland, soon to become the refuge of many Italian nonconformists. But Poland, too, closed the door. After seeing his five children die of the plague, he himself fell victim to it early in 1565, in the Anabaptist colony of Austerlitz in Moravia.

Ochino's views on religious toleration were set forth in Dialogue 28. The imaginary dialogue takes place between Pius IV, the ruling pope, and Cardinal Morone, who is supposed to defend the case for toleration. He considers three cases of heresy in order of gravity. The first concerns error on a point of doctrine not essential to salvation. Such error doesn't deserve death in any way. The second case concerns the heretic who errs by imprudence on points essential to salvation. Such a man should be enlightened, not killed:

"Heresy is a spiritual thing, it cannot be extirpated from the soul neither by scalpels, nor by swords, not even by fire, but only by the Word of God. This dissipates all the darkness of error, once it has enlightened the spirit. That's why Saint Paul says: 'The weapons of our warfare are not worldly' (2 Corinthians 10:4, R.S.V.)."

The third case is of the heretic who knowingly denies a truth essential to salvation. He should not be burned either, since no one can read the heart.

Cardinal Morone: "What can we know about man's inner disposition?"

Pius IV: "We certainly can judge him by his dead fruits."

Cardinal Morone: "But which?"

Pius IV: "Blasphemy, idolatry. The law of Moses demands that such be put to death."

Cardinal Morone: "We are not obligated to follow all strictures of the laws of Moses. Many such laws pertained only to the theocracy."

Cardinal Morone, the spokesman for Ochino, reviews all Biblical texts that Castellion had so ably argued in his defense of heretics: the parable of the tares; the answer of Christ to the sons of Zebedee: "Ye know not what manner of spirit ye are of" (Luke 9:55); the answer of Gamaliel to the Jews: "Keep away from these men and let them alone" (Acts 5:38, R.S.V.); Paul's answer to Titus concerning a heretic: "Have nothing more to do with him" (Titus 3:10, R.S.V.). May the magistrate reserve the sword, concludes Morone, for the crimes of common law.[8]

But such truths echoed faintly in most 16th-century hearts. A few more heretics had to die, a few more fires had to burn to illuminate the conscience. A generation later, in the New World, Roger Williams used the Parable of the Tares to make an eloquent appeal for freedom of conscience. He took the lesson of the parable beyond Castellion's application, and even beyond his contemporaries.

Whereas Williams' chief antagonist, John Cotton, the puritan minister of New England, saw in the tares the hypocrites that one should tolerate in the Church, Roger Williams saw in them the heretics and non-Christians which one should leave in peace in the world, even though they might be excluded from the Church. And whereas for John Cotton "the field" in the parable designates the Church, for Roger Williams this "field" designates the world. Cotton, a partisan of church-state union, wants hypocrites to be tolerated, but heretics he would leave to the State to punish. Roger Williams, on the contrary, advocates the excommunication of hypocrites and heretics to keep the church pure, but excommunication, he holds, does not touch the civil life.[9]

It was the viewpoint of Roger Williams that triumphed in America. Still to our ears ring the words of our Lord in the Parable of the Tares: "Let both grow together until the harvest"—good and bad, saints and heretics. This masterly statement contained the seed of religious toleration which, in the fertile soil of the New World, germinated and produced in due season the blessed harvest of religious freedom. □

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[4] F. Buisson, *op. cit.*, p. 396.

[5] Theodore Beza, *Traitee de l'autorite*, p. 31, quoted in F. Buisson, *op. cit.*, p. 331.

[6] F. Buisson, *op. cit.*, p. 380.

[7] R. Bainton, *Concerning Heretics*, pp. 169-183, quoted in J. Lecler, *op. cit.*, p. 328.

[8] J. Lecler, *op. cit.*, pp. 349, 350.

[9] R. Williams, *The Bloody Tenent of Persecution*, pp. 97-118, especially the summary on p. 118, reprinted in *Complete Writings of Roger Williams*, vol. 3 (New York, 1963).

(Continued from page 19)

some success. Later, Barruel's work was also published in America, abridged, but because the furor was abating by then, it seems not to have sold well. By the end of 1798 the violent and sarcastic Republican counterattack was having its effect, and the accusation that Morse and friends were using the pulpit for political purposes was especially damaging. Furious, but unable to supply specifics, Morse saw his campaign fizzle out in early 1799.[22]

The election of 1800 was fought with memorable bitterness, winding up in the House of Representatives where it took 35 ballots before Jefferson could be declared elected. Happily, religion and civil government both survived. Morse, Dwight, and their Congregationalist friends might have consoled themselves had they realized that the Massachusetts union of church and state still had 35 years to go, even with all the infidel conspiracies one might imagine. Freemasons, stung by the calumnies of Morse's group, hurried to demonstrate their patriotism by almost exaggerated visibility at Brother Washington's funeral in 1799. A Connecticut Jeffersonian said in 1800: "Robison and Barruel can deceive us no more. The 17 sophistical work-shops of Satan have never been found: not one illuminatus major or minor has been discovered in America."[23]

III

Periodically, since 1800, the legend of a superconspiracy has been called into service in American politics.[24] The anti-Masonic movements after 1827 saw Robison and Barruel in use again. This time it was not a European revolutionary plot as much as egalitarianism protesting a secret fraternity of the wealthy and the elite. No doubt Masons did favor their lodge brothers in business or politics, as those with common interests have always done, but it was resented as undemocratic at a time when universal suffrage was coming in. (Phi Beta Kappa was also attacked as a "secret" society.) Defeat of Sunday law forces in the 1835 effort to end Sunday mail service was charged to Masonic machinations. His enemies claimed that President Andrew Jackson, a Mason, was presumably both a deist and a sabbathbreaker.[25] Anti-Masonism was but the first of numerous mutations of the Illuminati story.[26]

From then to the Civil War, Catholics and Mormons took the brunt of conspiracy accusations. Catholic immigration was becoming heavy (and Irish), and Mormon practices such as polygamy were resented too. Samuel F. B. Morse, son of Jedidiah and inventor of the telegraph, was active in these battles. With no intentional humor, he identified Hapsburg Austria as paymaster and manager of the Catholic conspiracy in the U.S.A. Both slave and antislavery groups, in the intensity of their feelings at this time, also tended to see the other as run by a conspiracy and each placed the headquarters of the other's plot in London.[27]

Nativism and conspiracy theories recurred at intervals after the Civil War, again the usual targets being Catholics, Masons, and Mormons. The Illuminati legend reappeared, once again as a revolutionary conspiracy, though this time the chief was identified as the Masonic leader in the U.S. "General" Albert Pike (1809-1891) in fact did reorganize the Scottish Rite in the Southern Jurisdiction after the Civil War. He was alleged to be plotting with socialist revolutionaries in Europe.[28]

The Last Group Off the Boat. Radical theories gained a new element after 1870 with the increase of Jewish immigration to the United States.[29] (The last racial or religious group off the boat always seems to have attracted the most intense suspicion from the nativists.) In complete disregard of the behavior of Jesuits and Masons in the church-state battles then raging in France, Germany, and Italy, they were lumped together as coconspirators.

By the 1890's, fears of anarchism and socialism mingled with anti-Semitism, endemic in Christian Europe and high just then in Russia, France, and Romania. American populists and radicals feared the money lords and monopolists and thus extremists of right and left could join in at least some of their suspicions. Conspiracy devotees in the anything-but-gay nineties had an infinite variety of combinations and permutations of new and old theories to work with. Catholics were targets of the American Protective Association in the United States, but were themselves equally credulous about conspiracy charges against Freemasons in Europe.

The Russian Revolution revived conspiracy theories after World War I. One could now bring together in one conspiracy model sinister wealth, Jews, and revolution—Rothschilds *and* Bolsheviks. Through the 1930's, connecting Jews and Revolution became a Fascist staple.[30] The theme of plotting Jews was traced through medieval cabalistic "wisdom" and Masonic symbolism to the medieval Templars, alleged enemies of Altar and Throne. None of this was new, but it was perhaps "new light" to learn that the Illuminati arranged the crucifixion of Christ and they were the ones to whom He was referring when He said, "By their fruits ye shall know them."[31]

Today's Conspiracy. The present publicity for the Illuminati dates from the 1950's, when the theme was revived and revised as part of the conspiracy model favored by the John Birch Society. Catholic, Masonic, and Jewish components have been dropped or muted and the combo of revolutionists and world financiers remains. Today's conspiracy is seen as a survival of the Illuminati and asserts a direct line of descent from Weishaupt through Marxism to the Western financiers, who orchestrate the entire world scene, including the internal and external affairs of both Eastern and Eastern bloc powers. Therefore, nations only *appear* to be opposing each other in the confrontations of the past thirty years. In recent writing, the term "Illuminati" is not much used; Insiders, Bilderbergers, Trilateral Commission, or the Council on Foreign Relations do the tasks that used to be credited to Illuminati, and are identified as the puppetmasters who lead the conspiracy today.

It is curious but probably should not be surprising that some conspiracy views from the left also pinpoint the same villains; and both right and left probably drink, in a sense, from the same populist well. Both assert that a concentration of intellect and finance on the Eastern seaboard, what the British would term the "old boy" network, dominates high-level government and finance.[32]

In circulation currently is at least one other Illuminati variant, dipping back into the anti-Masonic and anti-Catholic lore of the nineteenth century and tying it in with the occult fad. One meets in this particular set of taped lectures all the spooky garbage of yesteryear, and one sadly murmurs with Solomon (alleged inventor of the occult symbolism): "There is nothing new under the sun." *Plus ça change, plus de même chose.*

book only the charlatan who is speaking has had access to and will now tell you about!

A characteristic that recurs in most expositions of conspiracy theories is the meticulous and plodding devotion to "facts," usually, today, in a plethora of footnotes, or the use *in extenso* of a document, real or imaginary. Then comes the leap of faith, the fantastic jump from specifics to a conclusion that shows little connection with the alleged supporting "facts." Relentless logic, heavy with citations, jumps to the breathtaking *non sequitur*. To reduce painful, complex developments to simple explanations, ignoring all the play and counterplay of human activity and the complexities of human social behavior, is an irresistible temptation to those frustrated by the direction in which history's currents seem to be running.

lyptic-confrontation terms. Since their total good is never achievable, they see total evil as having its way and paranoia and frustration are necessarily heightened.

L. B. Namier once said that "the crowning attainment of historical study" is to achieve "an intuitive sense of how things do not happen." It is precisely this kind of awareness that the paranoid fails to develop. He has a special resistance of his own, of course, to such awareness, but circumstances often deprive him of exposure to events that might enlighten him. We are all sufferers from history, but the paranoid is a double sufferer, since he is afflicted not only by the real world with the rest of us but by his fantasies, as well.[33]

Conspiracies *are* frequent and some are important. Christians, of course, would see the satanic rebellion against

IV

If we consider the durable Illuminati legend as a "case study," we can see that a major problem is in the use of historical materials. All assertions are *not* of equal weight. A mélange of truth and error, clothed in ostensibly scholarly apparatus of the footnote, may be swallowed without question for two reasons—it fits the presuppositions of the "researcher" and, second, the nature of historical investigation is not properly understood.

Footnotes may be ever so accurate in the sense they correctly quote a statement, but the statement itself may be worthless as proof. A quote must be checked; first, to see if it was ever said at all, and, if said, *in what context*. What else was said? Did the speaker or writer mean what he is now represented as meaning? Is his testimony credible? In other words, critical evaluation of sources is essential to come even close to historical verity. The flat assertions that "scholars have found," "everyone knows," or "I have in my hand a document," are beneath contempt as evidence. They rank with the mysterious

Of Myths and Legends. It *is* hard work to unravel some myths and legends. They have been around a long time; they overlap each other in the thickets of cultism; they have been wonderfully adapted to serve someone's special thesis. Historical research, properly so called, is not ransacking the historical grab bag. The a priori method often goes with tunnel vision, simply tuning out complexities or conflicting data. It is *not* research—a much abused and loosely used term—but a dangerous perversion of scholarship, doubly so because not only is the credulous audience taken in but probably the enthusiastic "researcher" himself.

Few historical phenomena are more complex than the building up of a revolutionary movement, whether political or religious. To blame it on a single group of conspirators, even if they had the longevity and cleverness claimed for them, would be an extreme case of reductionism—reducing a complicated situation to a single explanation or cause. The extreme of this view is that everything happening in the neighborhood, the nation, or the world is manipulated by "them" in a kind of puppet show. Those who see history as simply conspiracy ignore experience with real people and situations and see the world in apoca-

the divine order of the universe as the supreme conspiracy, but that is hardly the same as having a single *human* front organization to coordinate all the world's complexities. The wicked trouble the righteous, to be sure; but the wicked don't get on too well with one another either. (Sin is essentially confusion and cross-purposes, after all.) The belief that there is a human integrating cabal, lasting through centuries and with supernal skill and success, manipulating all movements, governments, and important individuals, leaves history behind and moves into fantasy. To assume that convergent purposes or momentary collaboration against a common foe proves central direction or identical goals, that accident and human choice are meaningless, ignores experience. We have a responsibility as citizens to think clearly, even in an age of increasing irrationality. With some understanding of human behavior, with a care for the quality of information we accept, we will not buy these farfetched concepts but will recognize them as recurrent expressions of pessimism reflecting the fears and needs of insecure people in troubled times. □

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[2] In the period from the fifteenth to the nineteenth centuries, the *Encyclopaedia Britannica* finds six dissimilar groups calling themselves by that name. Some were mystics seeking direct contact with divinity; others were promoting "clarified and exalted" intelligence of a secular variety. Art. "Illuminati," 11th ed. (1910), XIV:320.

[3] The standard treatment of the topic in English remains Vernon Stauffer, *New England and the Bavarian Illuminati* (New York: 1918). The European origins are covered in pages 142-228.

[4] Palmer, II:429, 430.

[5] For a succinct account of the German counter-revolutionary attacks on the rationalists, see Jacques Droz, "La Legende du complot illuministe et les origines du romantisme politique en Allemagne," *Revue Historique*, vol. 226, (October-December, 1961), pp. 313-338.

[6] Palmer notes that the rather helter-skelter French revolutionary government lacked any international propaganda agency and was frequently nonplused when confronted with foreign sympathizers wishing to assist. Furthermore, Jacobins were every bit as paranoid as their opponents, suspecting plots engineered with "Pitt's gold."

[7] Droz, *op. cit.*, pp. 318-321, 329-333, 336. Both German Protestants and Catholics viewed the recent dissolution of the Jesuit Order as "a catastrophe for Europe," opening the way for Satan to corrupt mankind with "insensate" ideas such as liberty and equality and the "cancer of freedom of the press." The supreme need then was to preserve the Catholic church. Some pietists did, however, suspect Jesuits and Masons of working together, though the Jesuits had been assailing Masons for years for advocating religious toleration which would be a first step toward destroying religion altogether. Conservatives in both confessions came to feel they must cooperate against liberal ideas.

[8] Palmer, *op. cit.*, vol. 2, pp. 53, 54. The literature is voluminous and almost none of it is in English. Counting the pamphlets, it runs to hundreds of titles. Bibliographies are found in Droz and Stauffer.

[9] Droz, *op. cit.*, pp. 316-319.

[10] *Ibid.*, pp. 313, 314.

[11] Augustin Barruel, *Memoires pour servir à l'Histoire du Jacobisme*, 4 vols. (The title varies slightly with each edition.) When the Society of Jesus was revived in 1814, Barruel rejoined. A more significant critic of revolutionary ideas was Joseph de Maistre, who pointed out that no society could exist with liberty for private persons to criticize or to exercise such aberrations as "reason." In consequence, Catholicism has to be the cement that holds society together (Palmer, *op. cit.*, vol. 2, p. 251).

[12] Palmer, *op. cit.*, vol. 2, pp. 251-255; Droz, *op. cit.*, p. 315.

[13] John Robison, *Proofs of a Conspiracy against all the Religions and Governments of Europe, carried on in the Secret Meetings of the Free Masons, Illuminati, and Reading Societies* (London: 1797). (Reissued by Western Isles (publishers) in 1967 with new preface.) According to John Reeves (c. 1793) in his *Thoughts on the English Government Addressed to the Quiet Good Sense of the People of England*, the Protestant Reformation and the French Revolution were the twin sources of evil in modern times (Palmer, *op. cit.*, vol. 2, p. 488).

[14] Stauffer, *op. cit.*, p. 208; Richard Hofstadter, *The Paranoid Style in American Politics and Other Essays* (New York: 1967), p. 11.

[15] Such names as Goethe, Herder, and Pestalozzi have been mentioned. Perhaps a closer tie would be Maximilian Montgelas (1759-1838), chief administrator of Bavaria through the Napoleonic era till his dismissal in 1817. He helped create the modern secular Bavarian kingdom and laid a notably heavy hand on the Roman church and its property. However, this would be the attitude of most German bureaucrats of the Enlightenment and it is hard to credit it exclusively to his membership in the Illuminati at the age of 25. "Montgelas," *Encyclopaedia Britannica*, 11th ed. (1910) XVIII:782-83.

[16] Palmer, *op. cit.*, vol. 2, pp. 53, 54.

[17] Stauffer, *op. cit.*, pp. 99-101. The New England Illuminati episode is covered by Stauffer, pages 229-360. With growing Protestant sympathy for persecuted Roman Catholics, some expositors shifted the identity of the Beast in Revelation from the Papacy to the French revolutionary government. (See also Garrett, *op. cit.*, pp. 164-168 and 174 on applications of the prophecies on 666 and the 1,260-day period.) Morse's enemies noted with malign glee how sympathetic Puritan clergy had become toward their one-time target, the Roman Church, now persecuted in France. Wrote one contemporary "poet":

> Of late the pulpits roar'd like thunder
> To bring the Whore of Bab'lon under;
> But now she's down, the tone is turn'd,
> And the old Whore is sadly mourn'd.
> (Stauffer, *op. cit.*, p. 282)

[18] Palmer, *op. cit.*, vol. 2, p. 543.

[19] Stauffer, *op. cit.*, p. 250.

[20] *Ibid.*, p. 273.

[21] *Ibid.*, p. 283.

[22] *Ibid.*, pp. 275ff.

[23] *Ibid.*, p. 356.

[24] Hofstadter, *op. cit.*, pp. 3-40. An excellent short survey of conspiratorial aspects of American political history is in Seymour M. Lipset and Earl Raab, *The Politics of Unreason: Right-wing Extremism in America, 1790-1970* (New York: 1970), pp. 34-282.

[25] Lipset and Raab, *op. cit.*, pp. 14, 35ff, 78.

[26] Hofstadter, *op. cit.*, pp. 14-18.

[27] *Ibid.*, pp. 19-23; David Brion Davis, *The Slave Power Conspiracy and the Paranoid Style* (Baton Rouge: 1969).

[28] Reputed a man of vast erudition, he developed his own version of rites for 33d degree Masons and died before he completed his massive *Morals and Dogma. (Dictionnaire Universel de la Franc-Maçonnerie* (Paris: 1974), II:1012.) French anti-Masonic legend identified him as head of a sect of satanism whose world headquarters was in Charleston, South Carolina. Why Charleston? It is close to the 33° parallel N. Latitude, of course! (Léon Meurin, S.J., Archbishop of Saint-Louis, *La Franc-Maçonnerie, synogogue de Satan* (Paris: 1893), pp. 456-59.) In fact, Pike resided in Washington, D.C.

[29] Lipset and Raab, *op. cit.*, pp. 254-55, 281-83.

[30] *Ibid.*, pp. 161ff. Among those who could be mentioned were Gerald Winrod, Father Coughlin, and Guy Carr.

[31] *Ibid.*, pp. 258ff. Along with the Jews, Masons were a special bugbear for the Nazis—both were accused of being unpatriotic internationalists.

[32] Without wishing to equate the scholarship demonstrated on right or left, it is interesting that the left conspiracy view frequently finds the same type of target, the "malefactors of great wealth," which in recent years would be the multinational corporation with its maleficent control of world economies. See for example Ross Barnet, *Roots of War* (1973).

[33] Hofstadter, *op. cit.*, p. 40.

INTERNATIONAL

IRS Revises Tax Exemption Plan Involving Private Schools

WASHINGTON, D.C.—The Internal Revenue Service has proposed revised guidelines governing tax exemption of private and religion-related elementary and secondary schools on the basis of racial nondiscrimination.

But while a Roman Catholic official called it "a substantial improvement" over the initial proposal announced in August, a Baptist executive said it fails to "resolve a fundamental First Amendment issue."

The proposed revised Internal Revenue procedure, released on February 9 "after considering public comments" to the initial proposal, "gives greater weight to each school's particular circumstances than did the earlier proposal in determining whether a school is racially discriminatory" in student enrollment, an IRS spokesman said.

The revised procedure "sets forth standards to be applied to two categories of private elementary and secondary schools: those that have been held by a court or government agency to be racially discriminatory ('adjudicated schools'); and those whose formation or expansion is related to public school desegregation in the community served by the school, and [that] do not have significant minority students enrollment ('reviewable schools')," the spokesman said.

"Under the new proposal," he said, "a school formed or substantially expanded at the time of public school desegregation will be classified as 'reviewable' if it has an insignificant minority enrollment and its formation or expansion is related in fact to public school desegregation in the community. . . .

"A school classified as 'reviewable' will be considered racially discriminatory unless it has undertaken actions and programs reasonably designed to attract minority students on a continuing basis."

"Unlike the earlier proposal," the IRS spokesman continued, "the new procedure does not require a minimum number of specified actions to be taken in every case. Rather, it provides greater flexibility for a school to show that it is operating on a racially nondiscriminatory basis."

George Reed, general counsel for the U.S. Catholic Conference, in asserting that the proposed revised procedure is "a substantial improvement" over the initial proposal, said it "demonstrates a degree of flexibility."

"The improvement reflects the input from the field," he said, "and suggests that whenever the Internal Revenue Service contemplates the issuance of a ruling adversely affecting the tax-exempt status of a 501 (c) (3) (private, nonprofit) organization, it should, as a matter of policy, provide the field with the opportunity for comment."

Dr. James Wood, executive director of the Baptist Joint Committee on Public Affairs, said the proposed revision "does not resolve the fundamental issue we raised at the December hearing—conducted by the IRS on the initial proposal—namely, the jurisdiction of the IRS over student enrollment in schools operated by churches and synagogues for their own members."

"Does the government have the right to tell such schools that it should have any voice in the enrollment in schools established to serve their own religious community? Our answer is No," Dr. Wood said.

"The point here is not racial discrimination or racism," he said, because enrollment in religiously operated schools is generally based on the "membership pattern" of the supporting church, synagogue, or mosque.

Also, the Baptist official asserted, the IRS, in an effort to be conciliatory, proposes in the revised revenue procedures to give "preferential treatment to certain types of church schools, such as Catholic and Amish."

This amounts to "discrimination by the IRS" in favor of such schools, since they are singled out to the exclusion of others, Dr. Wood said. "The law must be nondiscriminatory in all groups, not just Catholic and Amish," he said.

LANCASTER COUNTY, Pa.—Amish youngsters watch the world go by from the back of their parents' horse-drawn carriage during a Sunday drive. In striking contrast is the more modern conveyance at left.

ROCHESTER, N.Y.—Rochester and Buffalo school students march in support of constitutionally lawful use of the Bible in New York schools. The Baptist group, led by Home Missionary Byron Lutz, hopes to regain use of schoolrooms to conduct volunteer Bible classes after school hours.

INTERNATIONAL

Religious Meals on Wheels Held Threatened by Congress Bill

WASHINGTON, D.C.—The Meals on Wheels programs, most of which are operated by local churches and synagogues throughout the country, could be threatened by legislation recently passed by Congress, according to a public interest study group.

Two persons working in or with church-operated programs here agree there is reason for concern if the Carter Administration pushes for money to fund the legislation.

The American Enterprise Institute for Public Policy Research, an independent, publicly supported educational and research organization based here, has released a study titled "Federalizing Meals-on-Wheels: Private Sector Loss or Gain?" written by Michael Balzano, former head of ACTION and currently an AEI resident fellow.

In the 41-page study, Mr. Balzano argues that existing local grassroots organizations already possess the capability for administering Meals on Wheels programs on a nonprofit, voluntary basis, without governmental involvement.

"The federal government's duplication of the Meals on Wheels program could constitute a threat to other nonprofit organizations, large or small, which might one day find a federal competition delivering social services they now perform."

Pastor Joseph Frazier, president of the District of Columbia Council of Meals on Wheels, says his organization can feed 25 people for a week for $375. Taxpayers would have to pay $1,500 for the government to feed the same 25 people for a week, he said.

Neil Scott, who has been active in church and synagogue-affiliated and other privately operated Meals on Wheels programs for eight years, said congressional legislation would "destroy the religious aspect of Meals on Wheels and weaken voluntarism in this country."

Specifically, the legislation amends the Older Americans Act to create a federal Meals on Wheels program to provide a hot, home-delivered meal for elderly persons who, because of ill health or physical incapacity, are unable to prepare meals for themselves or attend neighborhood nutrition centers.

Noting that privately operated Meals on Wheels programs have been functioning in the United States for more than 25 years, Mr. Balzano says in the study that "hundreds, possibly thousands (of such programs) have sprung up in response to an ever-rising demand for service."

"Most of these private neighborhood Meals on Wheels programs have relied almost exclusively on volunteers to organize the program and deliver the meals to the homes of the elderly, and on charitable institutions—churches, civic organizations, the United Way—to subsidize recipients who are unable to pay for their meals," he states.

Mr. Scott, who organized the National Association of Meals on Wheels and currently is a volunteer worker in the Meals on Wheels program operated by Capitol Hill United Methodist church, said 80 percent of Meals on Wheels programs in the country are operated by local churches or synagogues.

"We estimate there are about 2,000 Meals on Wheels programs, each serving an average of 30 home-bound people, the majority elderly, with a total of 600,000 people served each day," he said.

"For religious groups operating Meals on Wheels programs, their action is a statement of their faith," said Mr. Scott, son of a retired Disciples of Christ pastor in Ohio.

"The religious element will have to go under the government program," he said. "There is a real need for federal funding of Meals on Wheels programs," he added.

Script Has New Ending in East Germany

EAST GERMANY—A colonel of the National People's Army addresses a class of senior high school pupils on national defense. He makes defamatory remarks about religion in general and Christianity in particular. A student stands up, says she is a practicing Christian, and protests the remarks. They are, she says, derogatory to her faith and in conflict with government policy. Her comments are brushed aside.

The girl subsequently is dismissed from school and—but that's the way the script used to go. This time there's a change. On March 6, 1978, the East German government affirmed that Christians have a distinctive and not unimportant role to play in society. [See LIBERTY, November-December, 1978.] The East German government is living up to its word.

After the colonel disregarded her protests, the girl complained to the head of the school. When he was unresponsive, her father complained to the regional authorities. The matter was promptly investigated. The head of the school was reprimanded and the colonel was forced to return to the school and apologize to the girl in front of the class. The local Lutheran bishop, on hearing of this, wrote a conciliatory letter to the colonel, thanked him for apologizing, and expressed the hope that the incident would not jeopardize his career.—A carefully investigated report from Keston College, Keston, Kent, England.

Bob Jones University Scores Significant Victory Over IRS

GREENVILLE, S.C.—In a little-noticed court ruling late last year, a fundamentalist Christian university has won a significant victory over the Internal Revenue Service (IRS).

U.S. District Judge Robert F. Chapman ruled late in December that the IRS did not have authority to revoke the tax exemption of Bob Jones University in April of 1975.

When the IRS took that action, it made the revocation retroactive to December 1, 1970. The university paid $21 under the Federal Unemployment Tax act for one employee during calendar year 1975 and then asked for the money back. When the IRS refused, the university filed a lawsuit.

The IRS justified its action by noting that the university forbids interracial

INTERNATIONAL

Creationist Scientists Discount "Giant Men" Stories

LOMA LINDA, Calif.—"The Glen Rose region of the Paluxy River does not provide good evidence for the past existence of giant men."

This is the conclusion of scientists of Loma Linda University, assisted by faculty members of Columbia Union College, Takoma Park, Maryland, and Southwestern Adventist College, Keene, Texas, after an on-site investigation of the Texas area. Reports of human footprints in the same rock strata as those of dinosaurs have circulated for some years. A motion picture, *Footprints in Stone*, produced by a fundamentalist film studio, implies that man and the giant reptiles coexisted in the Paluxy area.

The Loma Linda report, written by Dr. Berney Neufeld, was published in the magazine *Origins*. The article cites evidence that the prints were produced by carving, not by natural processes. Residents in the Paluxy area recall that tracks were artificially made as a source of income during the depression years, according to Dr. Neufeld, now professor of biology, Southwestern Adventist College, Keene, Texas.

"The Glen Rose region," he says, "does not provide evidence of the coexistence of such giant men or other large mammals and the giant dinosaurs.

"Does this mean the concept of antediluvian man and the Flood story is incorrect? No. It may be evidence only that antediluvians did not cohabitate with dinosaurs. To ignore such reports because they may be inaccurate would be like refusing to listen to the weather forecast because some of the predictions fail to materialize. On the other hand, to accept all such reports as factual would be like believing without verification all the claims made by an automobile dealer or a real estate salesman. In any kind of investigation—but especially when investigating the past, where data are more equivocal—caution and thoroughness should characterize the work done, and conclusions should not be drawn prematurely."

dating and marriage. It charged that this was a form of racial discrimination in violation of Section 501 (c) (3) of the Internal Revenue Code. Bob Jones University maintained that the policy was in accordance with its religious beliefs.

Judge Chapman stated that the denial of the university's tax exemption "because of its rules regarding interracial dating and marriage, penalized the plaintiff for the exercise of its religious beliefs." He added that "there has yet to be expressed any compelling public policy prohibiting racial discrimination by religious organizations."

According to Judge Chapman, the effect of the IRS' arguments against granting tax exemption to the university "is to strengthen those religious organizations whose religious practices do not conflict with federal public policy and to discriminate against those religious groups whose convictions violate these secular principles. The unavoidable effect is the law's tending toward the establishment of the approved religions."

Busing of Nonpublic Students Upheld by Pennsylvania Court

HARRISBURG, Pennsylvania—The Pennsylvania Supreme Court has upheld a 1972 state law that provides for the busing of private or church-related school students up to 10 miles beyond public school district boundary lines.

Five Pennsylvania school districts had challenged the law, citing decisions by federal courts in Iowa and Rhode Island outlawing similar provisions as constituting a "religious preference" to nonpublic school students.

Pennsylvania Supreme Court Justice Robert N. C. Nix said the five school districts' reliance on the Rhode Island and Iowa decisions was "misplaced." He said the districts failed to provide the "identical" busing called for by State Act 372 of 1972.

"Although students attending church-related schools are the predominant nonpublic beneficiaries of the Act," Justice Nix said, "the transportation provided by the Act is totally unrelated to the religious mission of these schools."

He said "the primary beneficiaries in fact are the students, and any remote benefit received by the nonpublic schools is too indirect and incidental to render the Act constitutionally infirm. . . . The Act does not require excessive governmental entanglement with the affairs of the religious schools involved." The Supreme Court's decision was made in a 3-2 vote.

MIAMI—Jerry Hochfelsen created this picture of Christ by printing the Gospel according to Matthew from start to finish—more than 35,000 hand-lettered words. He performed the task by starting at the top and ending the scripture precisely where the picture ends.

LETTERS

Army Chaplains

As a retired USAF chaplain who served four years in the Army as a GI, I found your article "Wanted: Army Chaplains, Christians Only Need Apply" (January-February, 1979) of great interest. What with a total of fourteen years active duty and eight years of Reserve duty I think it is fair to say that the military chaplaincy of today would never draw a remark like Lincoln's from the White House. One of the most effective men I knew in the Air Force chaplaincy was one of your Seventh-day Adventist men by the name of Hill.

WILLARD L. CONRADSON
Pastor
Trinity Lutheran Church
Anaheim, California

[Lt. Col. Wayne C. Hill served at Lackland Air Force Base, San Antonio, Texas. He is now retired and living in Walla Walla, Washington.—Eds.]

On your January-February cover, you quote Mr. Lincoln's reference to Army chaplains as the war began as "the worst men in the service" below a photograph of soldiers and a Catholic priest.

I do not mind it when you put down Catholics; we are a self-satisfied and hearty lot. But Mr. Lincoln was referring to "incompetent preachers who, for the most part, were unable to find positions in respectable churches," according to your lead paragraph on page 2. As it was not until 1861 that Catholic priests were allowed to serve as chaplains, and virtually all priests found positions in parishes throughout America, I think your cover was out of order.

ROBERT A. BOLTON
Attorney
North Hollywood, California

[Would you believe we didn't even notice the minister was a Catholic priest? All we were concerned about was getting a picture of a Civil War religious service. So absolve us, please, of anti-Catholic bias, while indicting us for carelessness in our choice of pictures!—Eds.]

Your article on Army chaplains might have mentioned that during World War II there were no black chaplains in the United States Navy. Blacks were excluded, whether Christian or not, solely because of their color. The Navy might explain this by saying that chaplains were officers, and since blacks were excluded from the ranks of officers, they thereby were excluded from the ranks of chaplains. Query: Was this racial or religious discrimination, or both?

E. A. DAWLEY
Attorney
Oakland, California

Second Law of Thermodynamics

William Watts shared a lot of truth in his dissecting of creationists who don't play fair (ethically) with evolutionists ("Ten Reasons Many Scientists Reject Creationism," March-April, 1979). I do wonder, however, whether your science editor is in agreement with Dr. Watts's position with respect to the second law of thermodynamics.

KEITH ROGERS
Takoma Park, Maryland

["William Watts, in the March-April issue of LIBERTY, presents a number of suggestions that deserve intensive consideration by proponents of Biblical creationism. Dr. Watts is correct if the second law of thermodynamics is restricted to its historical development in relation to heat engines and the transfer of thermal energy. But the philosophical generalizations regarding energy transfer, probability, information exchange, and common sense that include the earlier statements of the second law and that are now commonly referred to by the designation second law of thermodynamics do, in our opinion, provide one of the strongest models for the origin of life and the development of major kinds of organisms from simpler ancestors."—Robert H. Brown, science editor, LIBERTY.]

Ten Reasons

William Watts is to be commended for "Ten Reasons Many Scientists Reject Creationism."

Personally believing in the Biblical account of Creation, I also believe that the case made for its defense should be presented in the spirit of love, built upon a solid foundation of accurate and documented research, refined through the channels of competent peer review, and articulated in honesty.

However, let it also be known that the "ten tactics" used by some creationists are likewise the literary tools of some evolutionists. Having been fed the evolutionary diet through my junior year of college in the public school system, I have had plenty of opportunity to taste the tantalizing ten from the tables of the unscientific counterparts mentioned by Dr. Watts.

Perhaps Dr. Watts could follow up on his article with another entitled "Ten Reasons Many Christians Reject Evolution." You don't have to be a creationist to be "unscientific." You can even be a scientist!

HANS VARMER
Pastor and former evolutionist
Petersburg Seventh-day Adventist church
Petersburg, Virginia

Creation Debate

A correspondent in your September-October, 1978, issue, a schoolteacher, makes an impressive case that the schools are indeed neutral and do not teach a "religion."

While it is clear that there is not one carefully formulated set of "secular" doctrines advocated and operative in the schools, and the assumptions and opinions of the teachers and administrators are pluralistic, there is a deeper consideration. As Prof. David Little points out, "It is simply the case that the organization and operation of public education presupposes commitments and convictions that sometimes exclude and contradict competing commitments and convictions."

The magical words *objective* and *neutral* are scant comfort to a family when it feels the schools are contradicting and competing with values they hold sacred.

The Supreme Court has had the greatest difficulty drawing hard and fast lines among different sets of lofty convictions, calling some "religious" and some not. It is significant that none of the value conflicts cited by the Court in the *Yoder* decision—competitiveness versus cooperation, intellect versus wisdom, or disagreement over the status of manual work, for example—is necessarily religious.

Many of the great issues of conscience and belief are no longer fought under religious banners. The concern with racial and sexual equality, the allocation of

LETTERS

power, institutional alienation, and basic concepts of human worth underlying different economic systems are heavily value laden.

It is concern with the school as a social environment, where a child will learn much more than what is in the formal curriculum, that has not been addressed. To say that the schools reflect the wishes of the community is a dog in the manger. The majority does not determine what church my child shall attend, what clothes he shall wear, what food he shall eat, nor what literature he reads. Neither should the majority determine what philosophy prevails in education. It is the family and not the political majority that the Constitution empowers to make schooling decisions.

The present system of state-run education presents "free" schooling to those who desire it. Affluent parents have a choice if they do not like what the state offers. Less affluent and the poor have little or no choice. Denying a citizen fundamental rights because of his economic status has been held unconstitutional by the Court in numerous instances.

Incidentally, Creation would not be an issue if schools were institutions of choice. Such questions should fall into the free cultural sphere without government preference.

We suggest that education is too important to be left in the hands of government. Schools are the source from which art, science, and morality—the whole substance of culture—ultimately flow.

ROBERT S. MARLOWE
Council for Educational
Freedom in America, Inc.
Washington, D.C.

Washington a Viking?

Your readers may be interested in a few sidelights to John Kent's "Was Washington a Viking?" (January-February, 1979). The Library of Congress has on its wall a chart of Washington's ancestry, from Ragnvald Øysteinson (born c. 810), Earl of Møre and Romsdal in southwestern Norway (not far north of Voss), through William the Conqueror to Washington's mother. Another historian has traced the ancestry of his father to the same earl. One historian wrote me some years ago that 19 of our first 20 Presidents had Norse blood, the exception being Van Buren, of Dutch descent. But in the early 1600's there were 8,000 Norsemen in the Dutch Merchant Marine. Many settled in New York—the purchase of Manhattan Island from the Indians was facilitated by a Norwegian acting as interpreter.

William the Conqueror brought to England the basis of our common law. Norway has given us many leaders, as well as plain citizens—more in proportion than any country except Ireland. And a large proportion of immigrants from that country came from the eastern part, where such cities as Dublin, Limerick, Waterford, Wexford, and Cork were Viking colonies. Quite a contribution from a country—the size of New Mexico—whose population reached four million only a couple of years ago.

The possibility that the name Washington was previously "Vossingson" is pure conjecture. Another theory is that it was "Wassyngton," but the letter "W" is extremely rare in Norway. If anyone has a better answer, I'd be anxious to hear it. Our motto is "*Veritas Ex Tumultu*"—the truth out of agitation. We have a lot of fun with the "tumultu" but are dead serious about the "veritas."

W. R. ANDERSON
President
Leif Ericson Society
P.O. Box 301
Chicago, Illinois

Enjoys LIBERTY

LIBERTY magazine, in its format and thrust, is a heartening bulwark for us who have a strong conviction about the maintenance of separation of church and state and about religious freedom. There is such a difference between esteem of such safeguards and undergirding them.

Thank you for mediating well the difficult pros and cons of constitutional as well as doctrinal concerns.

ROBERT C. HARDER
Portland, Oregon

My congratulations for your brilliant and interesting magazine. Since this magazine was introduced to me by a friend I have never missed a copy.

HENRY ROLAND ACQUAH
Akim Oda, Ghana, Africa

With too much to read and my back issues of *U.S. News & World Report* and *Newsweek* piling up unread, I sat down and read your September-October, 1978, LIBERTY kiver-to-kiver. Wow! And not even any ads! How do you do it?

People whose views are contrary to mine always puzzle me, especially if they are earnestly trying to be Christians. Now I can read the best of each side from people whose values are the same as mine. And no need to run into any hard feelings, either!

MARION RAUGUST
Oakland, California

Factual and Analytical

LIBERTY magazine deals with current issues in a factual and analytical manner. As a lawyer I am particularly impressed with your church-state articles, which are oriented to American jurisprudence and frequently cite court decisions in point.

ROBERT A. BECKERLE
Attorney
Mobile, Alabama

A highhanded attempt by the state to intrude on church prerogatives? Or prudent action by the state to protect public interest? See "A Constitutional Outrage," page 2.

VOLUME 74, NUMBER 3, MAY-JUNE, 1979 (ISSN 0024-2055)

FEATURES

DEPARTMENTS

STAFF

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Illuminating the Issues

There's little doubt which article in this issue will bring the most mail. Walter Utt's "Illuminating the Illuminati" will be a pens-down winner. Conspiracies featuring mysterious international figures turn otherwise reasonable citizens into first-order conspiracy buffs. And you can bet that the qualified and documented perspective of Dr. Utt will be overlooked by many who will winnow the chaff for sensational fluff, and likely find "evidence" that LIBERTY, too, has been infiltrated by—who else?—the Illuminati.

The article that should bring the most outraged mail is Jerry Wiley's "A Constitutional Outrage." What has happened to the Worldwide Church of God is unbelievable. On the flimsiest of allegations by a thimbleful of dissident members, the headquarters of the 100,000-member Pasadena-based church was invaded by California state officials, a receiver installed, files rummaged, and irreparable damage done to the church. Put the case down as a classic of post-Guyana overkill.

Time may demonstrate that the allegations have substance; church officials, who certainly lived extravagantly, may be proved to be scoundrels. But church members and the state had other legal avenues—through criminal law, for example—for dealing with the issues. By acting as they did, California officials ensured that the church, however innocent *or* guilty its officials may prove to be, has suffered irreparable damage.

And let this be noted: The Worldwide Church of God has no connection with the Seventh-day Adventist Church, though both are Sabbathkeeping organizations. To my thinking, the Worldwide Church of God qualifies in several respects as a cult. (For the definition of a cult, see page 8.) But in New Testament terms, so does the Roman Catholic Church. And there are some who would charge the Seventh-day Adventist Church similarly. The point is that most any religion is a cult to somebody. And unless we are willing to defend that somebody's right to be wrong, we do not deserve the freedoms bequeathed us, and will not long retain them.—R.R.H.

DECLARATION OF PRINCIPLES

We believe in religious liberty, and hold that this God-given right is exercised at its best when there is separation between church and state.

We believe in civil government as divinely ordained to protect men in the enjoyment of their natural rights, and to rule in civil things; and that in this realm it is entitled to the respectful and willing obedience of all.

We believe in the individual's natural and inalienable right to freedom of conscience: to worship or not to worship; to profess, to practice, and to promulgate his religious beliefs, or to change them according to his conscience or opinions, holding that these are the essence of religious liberty; but that in the exercise of this right he should respect the equivalent rights of others.

We believe that all legislation and other governmental acts which unite church and state are subversive of human rights, potentially persecuting in character, and opposed to the best interests of church and state; and, therefore, that it is not within the province of human government to enact such legislation or perform such acts.

We believe it is our duty to use every lawful and honorable means to prevent the enactment of legislation which tends to unite church and state, and to oppose every movement toward such union, that all may enjoy the inestimable blessings of religious liberty.

We believe that these liberties are embraced in the golden rule, which teaches that a man should do to others as he would have others do to him.

RALPH C. WORKMAN

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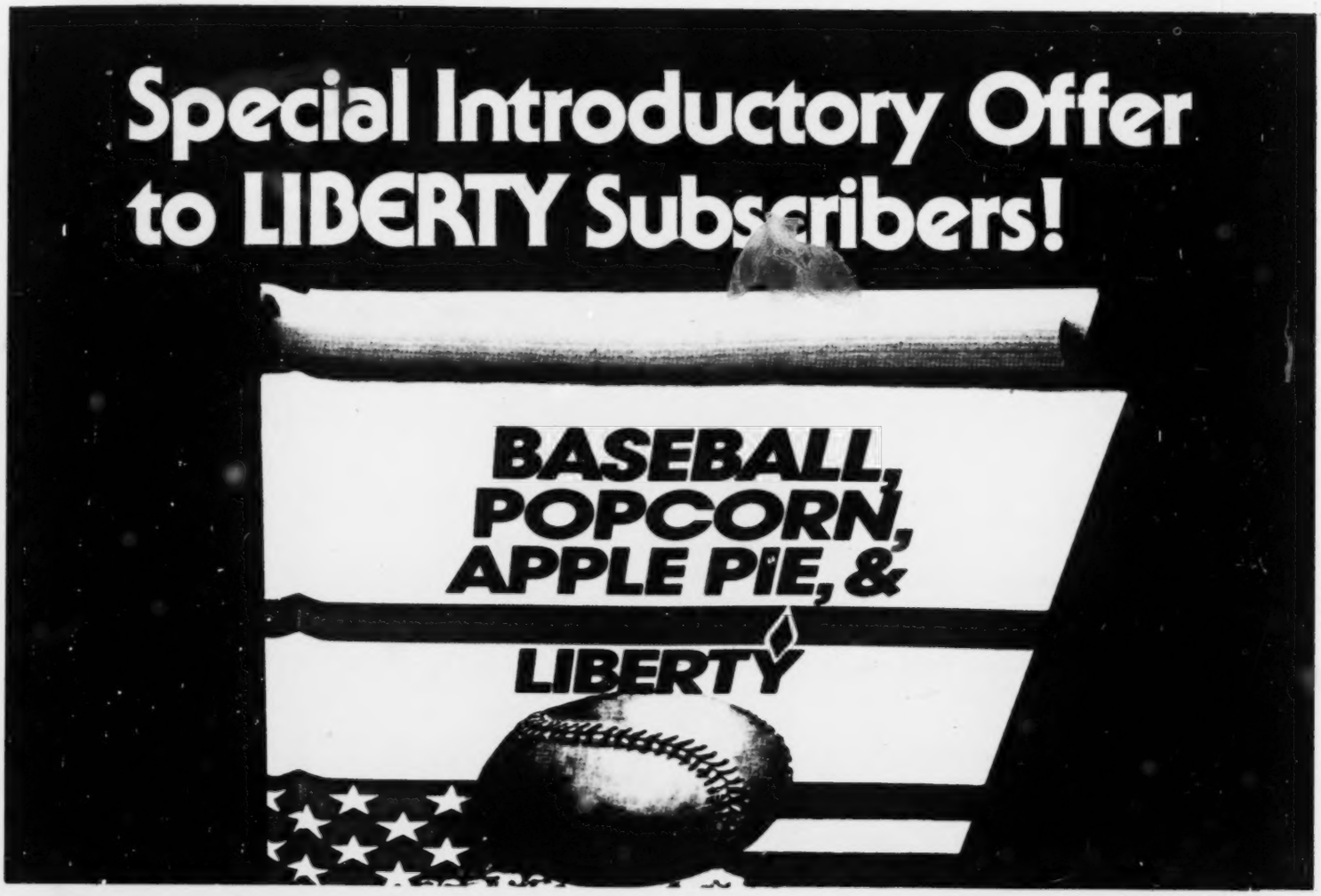

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